

1 IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

2 IN AND FOR NEW CASTLE COUNTY

3
4 2008 NATIONAL HIGH SCHOOL MOCK TRIAL
5 CHAMPIONSHIP ROUND

6 JONESBORO HIGH SCHOOL
7 JONESBORO, GEORGIA

8 v.

9 KALAMAZOO CENTRAL HIGH SCHOOL
10 KALAMAZOO, MICHIGAN

11 BEFORE: HON. MYRON T. STEELE, CHIEF JUSTICE
12 HON. RANDY J. HOLLAND, JUSTICE
13 HON. CAROLYN BERGER, JUSTICE
14 HON. JACK B. JACOBS, JUSTICE
15 HON. HENRY DUPONT RIDGELY, JUSTICE

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17 TRANSCRIPT OF 2008 NATIONAL HIGH SCHOOL
18 MOCK TRIAL CHAMPIONSHIP ROUND

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22 JOHN P. DONNELLY, RPR
23 SUPERIOR COURT REPORTERS
500 N. KING STREET WILMINGTON, DELAWARE 19801
(302) 255-0563

May 10, 2008
Courtroom No. 8B
7:40 p.m.

SCORING PANEL:
DAVID BERLIN, ESQUIRE

SHAKUNTALA L. BHAYA, ESQUIRE

DWAYNE D. FOX, ESQUIRE

ANNIE INGRAM, RN

ANDREW F. SUSKIO, ESQUIRE

PETER J. WALSH, ESQUIRE

EILEEN WILKINSON

1 THE COURT: Good evening, Counsel. Let me
2 before we begin the pretrial matters, introduce my
3 colleagues so you can identify name and person. To my
4 far left is Justice Henry duPont Ridgely. To my
5 immediate left is Justice Carolyn Berger. To my
6 immediate right Justice Randy J. Holland. To my far
7 right is Justice Jack B. Jacobs.

8 Are video cameras or recording devices
9 present? Does any team have an objection?

10 MS. LEVINE: No objection, Your Honor.

11 THE COURT: My obligation is to remind all who
12 are present that no communication is allowed between
13 participating team members and others in the courtroom
14 until the trial is concluded. I remind the timekeepers
15 and teams that the only communication between the
16 timekeepers and times is the display of time remaining
17 cards. I remind audience members that only people
18 associated with the participating teams and current
19 administrators are permitted in the courtroom. Do we
20 have present two student timekeepers seated together
21 where they are visible both to the teams and to me?

22 TIME KEEPERS: Yes, Your Honor.

23 THE COURT: Thank you. Have you exchanged

1 team rosters and provided to each member of the judging
2 panel?

3 MS. HARRIS: Yes, Your Honor.

4 MR. THOLE: Yes, Your Honor. We believe they
5 have been distributed, if not we can do that now.

6 THE COURT: Apparently, they have now. Would
7 you please -- the scoring judges are to be introduced
8 it says. Will the scoring judges please introduce
9 themselves.

10 MR. BERLIN: My name is David Berlin. I am an
11 attorney from Albuquerque, New Mexico.

12 MS. WILKINSON: I am Eileen Wilkinson. I am
13 from Delaware. I work for the University of Delaware.

14 MR. FOX: I am Dwayne Fox. I am from Phoenix,
15 Arizona. I am an attorney.

16 MS. INGRAM: I am Annie Ingram. I am a
17 registered nurse here in Delaware at Christiana
18 Hospital.

19 MS. BHAYA: Shaku Bhaya, I am a Delaware
20 attorney.

21 MR. WALSH: I am Peter Walsh, also a Delaware
22 attorney.

23 MR. SUSKO: Andrew Susko, I am the president

1 of the Pennsylvania Bar Association, a lawyer
2 practicing in Philadelphia.

3 THE COURT: I am sure you know that my
4 colleagues will be scoring, but I will not be. I will
5 simply be presiding over the trial. Would you please
6 identify your participating members by name and role,
7 but not identify your school, or state, or anything
8 associated with your team's code.

9 MS. HAZELL: Good evening, Your Honor. My
10 name is Jayda Hazell, and I am the time keeper for the
11 plaintiff.

12 MS. HARGIS: Good evening, Your Honor. My
13 name is Lindsay Hargis. Today I will be conducting the
14 direct examination of Devereaux Terry and the cross
15 examination of Jamie Newcastle.

16 MS. PARKHOUSE: Good evening, Your Honor. My
17 name is Laura Parkhouse. Today I will be conducting
18 the direct examination of Sammy Rodney, conducting the
19 cross examination of Pat Kent and presenting
20 plaintiff's closing arguments.

21 MS. HARRIS: Good evening, Your Honor. My
22 name is Bridget Harris. Today I will be conducting the
23 direct examination of Aaron Sussex and the cross

1 examination of Chris Read, and I will be delivering the
2 open statement for the plaintiff.

3 MS. WILSON: Good evening, Your Honor. My
4 name is Ralph Wilson. I am Devereaux Terry.

5 MR. ORR: Good evening, Your Honor. My name
6 is Braeden Orr and I am Sammy Rodney.

7 MR. KELLY: Good evening, Your Honor. My name
8 is Tobias Kelly and I am Aaron Sussex.

9 THE COURT: Thank you.

10 MS. TEUTSCH: Good evening Justice duPont
11 Ridgely, Berger, Steele, Holland and Jacobs. My name
12 is Maggie Teutsch and I, along with my co-counsel Gavin
13 Thole and Maura Levine, we represent Delaware Auto and
14 Marine and its board of directors. Today as witnesses
15 we will be calling Pat Kent played by Alex Rey. Jamie
16 Newcastle played by Keegan Davenport. Agent Chris Read
17 played by Brian Fricke. Our time keeper is Vershurn
18 Ford.

19 THE COURT: I don't see anything that
20 identifies the team of any participating member so I
21 now ask you the important question, are each of you
22 ready for trial?

23 MS. TEUTSCH: Yes, Your Honor. As a

1 preliminary matter, we ask permission to move about the
2 courtroom freely.

3 THE COURT: By that you mean more than
4 approaching witnesses with evidence?

5 MS. LEVINE: No, Your Honor, we ask the
6 Court's preference on being able to move about the well
7 freely.

8 THE COURT: The preference is that you address
9 witnesses and the Court from the podium or from your
10 seat at counsel table.

11 MS. LEVINE: Yes, Your Honor.

12 THE COURT: The answer to your question is no,
13 you may not move freely about the courtroom.

14 MS. LEVINE: We have also been told to place
15 our Exhibits with the bailiff to my right after they
16 have been admitted into evidence, is that consistent
17 with the Court's preference?

18 THE COURT: That is.

19 MS. PARKHOUSE: There are no pretrial matters
20 from the plaintiff, Your Honor.

21 THE COURT: May we swear the witnesses. Will
22 the witnesses please rise.

23 (Witnesses were duly sworn.)

1 THE COURT: Plaintiff's ready to proceed?

2 MS. HARRIS: Yes, Your Honor. May it please
3 the Court, opposing counsel, Members of the jury. I
4 will never sell the company DAM, no matter what the
5 price. This quote by the defendant, Pat Kent, sums up
6 in one sentence exactly why we are here today.

7 Good evening, my name is Bridget Harris. I,
8 along with co-counsel Lindsay Hargis and Laura
9 Parkhouse represent the plaintiff in today's case
10 Mideast Stevedores Service Corporations or MESS, a
11 Delaware corporation. My client has filed this action
12 against the Delaware Auto and Marine Corporation and
13 individual members of its board of directors, including
14 Pat Kent, DAM's Chief Executive Officer. Last year my
15 client, which is in the business of operating and
16 owning marine cargo terminals was seeking to expand its
17 business into the Port of Wilmington and sought to
18 purchase a controlling interest in Delaware Auto and
19 Marine.

20 However, DAM's board of directors recently
21 employed a poison pill technique that effectively
22 blocked any stock purchase. Essentially, this means
23 that the buy of any shares purchased by my client would

1 be diluted. Therefore, making it cost prohibitive to
2 purchase a controlling interest in DAM. Realizing
3 this, my client offered to purchase the shares of DAM
4 for \$16 per share, far more than it's trading value of
5 only \$10.50, if DAM's board would withdraw the poison
6 pill.

7 Hearing no response, my client increased the
8 offer to \$20 per share, almost twice its trading value.
9 Rather than allowing shareholders to accept this
10 generous offer, DAM's board of directors has refused to
11 withdraw the poison pill.

12 Today we will prove by a preponderance of the
13 evidence that DAM, through its president and board
14 chair Pat Kent, has breached his fiduciary duty owed to
15 its shareholders to insure that their stock values are
16 maximized. We will prove if my client's offer is
17 allowed to be blocked, then the Delaware Auto and
18 Marine Corporation will likely never reach \$20 per
19 share in the foreseeable future.

20 Samuel Rodney, an expert in the field of
21 accounting and stock valuation will testify that he
22 thoroughly and accurately researched the stock prices
23 of comparable shipping businesses. He will explain to

1 you that the stock price of marine transportation
2 companies has been declining ever since the terrorist
3 attacks of September 11, 2001. He will further explain
4 to you that the long-term business plan proposed by Pat
5 Kent will likely never have success, due to the
6 existence of contingency factors beyond Kent's control.

7 Shareholder Erin Sussex who recently retired
8 from DAM will explain to you the financial hardships
9 that this corporate selfishness will cause, and will
10 serve as an example of DAM's breach of its fiduciary
11 duty. They will attempt to prove my client's proposed
12 purchase of the common stock of DAM will somehow pose a
13 threat to national security of the United States, but
14 today, the defense will not be able to meet their
15 burden to prove this claim.

16 Mr. Devereaux Terry, the president of MESS
17 will explain to you that his native country of Aladdin,
18 which owns 100 percent of my client's common stock, is
19 a capitalistic society which has no ties to terrorist
20 activities. The evidence will further show that an
21 independent auditor has rated my client second safest
22 in the world for port operations.

23 Members of the jury, the evidence will show

1 the defense witnesses will lack credibility. Mr. Chris
2 Read, DAM's terrorism consultant will have none of the
3 witnesses or documents in court today that he claims
4 support his allegations. Moreover, the evidence will
5 show that Mr. Read cannot be believed because he is
6 biased against Devereaux Terry due to hard feelings
7 that date back to their high school days. The evidence
8 will further show that Jamie Newcastle, DAM's
9 underqualified security advisor cannot be believed
10 because he is biased; because if MESS acquires DAM, Mr.
11 Newcastle will be out of a job.

12 Finally, you will see that by DAM not allowing
13 its shareholders to sell their stock no matter what the
14 price, DAM's president and his board of members have
15 acted in bad faith with only their own misguided
16 interest in mind and not those of DAM shareholders.

17 At the close of evidence my co-counsel Laura
18 Parkhouse will return to you the closing argument and
19 which she will remind you of the duty of DAM's board to
20 its shareholders and the breach of that duty that its
21 poison pill creates. She will ask you to return with a
22 verdict finding that DAM has breached its fiduciary
23 duty owed to its shareholders and find that MESS poses

1 no threat to the national security of the United
2 States. Thank you.

3 THE COURT: In case there is any confusion
4 about your question about moving freely around the
5 courtroom, I meant, I think, and said, when you are
6 addressing witnesses or the Court. So you may draw
7 closer to the jury than the podium.

8 MS. LEVINE: Thank you, Your Honor. May it
9 please the Court, counsel, members of the jury.
10 Promote, protect, preserve. The United States of
11 America has a rich history of shipping and ship
12 building. The Port of Wilmington is at the heart of
13 the ship building industry. In 1965, a young man named
14 Pat Kent, who barely had two nickels to rub together,
15 followed in the footsteps of those who came before him.
16 He looked out across the dock and had a vision to
17 create what is now Delaware Auto and Marine, which
18 today we will be referring to as Delaware Marine. He
19 did not know then that nearly 40 years later he would
20 be required to fight in order to promote, protect, and
21 preserve the values which we, as American citizens,
22 hold dear.

23 Pat Kent lived the American dream. Mr. Kent,

1 would you please stand.

2 With honesty, hard work and determination,
3 Delaware Marine grew under Mr. Kent's leadership. In
4 1985, the small company was so successful that it began
5 trading its stock on the New York Stock Exchange. No
6 one knows the inner workings of the Port of Wilmington
7 and the marine cargo business like Pat Kent. Thank
8 you, Mr. Kent. Like many American businesses, Delaware
9 Marine felt a devastating financial effects after the
10 attacks on this nation on 9/11. Mindful of the best
11 interest of their stockholders, the Board of Directors
12 at Delaware Marine designed a strategic business plan
13 developed to revitalized the company and the Port.

14 By dredging the shipping lanes of the Delaware
15 River, larger vessels can enter the Port. Larger
16 vessels means more cargo, more cargo means more
17 profits, and more profit means higher stock prices.
18 They will revitalize the company and Delaware Marine
19 will go from being a good company, to a great company.

20 However, while the board of directors at
21 Delaware Marine was planning a revitalization of the
22 Port, other more sinister plans were afoot. On a small
23 island off the Coast Oman a nation called Aladdin was

1 teaming with activity. A company from the country of
2 Aladdin, Mideast Stevedore Services, which we will be
3 referring to as MESS, was planning to take control of
4 the Port of Wilmington. While this nation was
5 recovering from the attacks on 9/11, efforts were
6 underway to launch a hostile takeover of Delaware
7 Marine.

8 MESS's offer was intended to appear attractive
9 to some, but today you will learn that MESS's offer is
10 not in the best interest of Delaware Marine's
11 stockholders because the offer significantly under
12 values the worth of this fine company. Today you will
13 also learn that MESS's offer is not in the best
14 interest of national secure because MESS has material
15 ties to terrorism. Aladdin owns and controls MESS.
16 Evidence will show that the prime minister of Aladdin
17 is a known associate of the international terrorist
18 Drew Terry, the same international terrorist who has
19 murdered hundreds of people. The same international
20 terrorist who has injured hundreds more, and the same
21 international terrorist who is the brother of MESS's
22 president Devereaux Terry. Devereaux Terry has
23 expressed his hatred for the United States saying it

1 would bring him great pleasure to see America attacked,
2 where innocent Americans will be killed.

3 We intend prove by a preponderance of the
4 evidence that MESS has material ties to terrorism. If
5 MESS controls the Port of Wilmington, American ports
6 and American interests will be vulnerable. If MESS
7 controls the Port of Wilmington, national security will
8 be in jeopardy.

9 The board of directors at Delaware Marine have
10 the duty which requires them to resist the offer by
11 promoting their business plan, preserving the values of
12 Delaware Marine and protecting their stockholders.

13 At the conclusion of this trial, we will ask
14 you to find in favor of Delaware Marine. We will ask
15 you to help the Board of Directors promote their
16 business plan which is in the best interest of their
17 stockholders, preserve the marine cargo heritage at the
18 Port of Wilmington and protect the United States of
19 America. Thank you.

20 THE COURT: You may call your first witness.

21 MS. HARGIS: At this time the plaintiff calls
22 Devereaux Terry to the stand.

23 (Witness was previously sworn.)

1 DIRECT EXAMINATION

2 BY MS. HARGIS:

3 Q. Would you please introduce yourself to the
4 jury?5 A. My name is Devereaux Terry. I am the
6 president of Mideast Stevedore Services, Incorporated,
7 otherwise known as MESS, Incorporated.

8 Q. What exactly does MESS do as a corporation?

9 A. We operate maritime logistic terminals in
10 various portions of the world currently in the Middle
11 East and Europe.

12 Q. Now, where is MESS incorporated?

13 A. We are incorporated of the laws of Delaware,
14 as well as Aladdin.

15 Q. Do you have any personal ties to Aladdin?

16 A. Yes, ma'am. I was born there, and lived there
17 for the first 14 years of my life.

18 Q. Why did you come to the United States?

19 A. I came to the United States because my mother
20 was born in England, and was educated there, as well as
21 the US. She wanted me to have the same opportunities
22 that she had. So she enrolled me here in boarding
23 school in Wilmington, Delaware.

1 Q. After coming to boarding school, did anything
2 happen?

3 A. Yes. I learned that my mother was previously
4 diagnosed with a terminal illness before I left. Five
5 weeks into my arrival here in the US, my mother died.

6 Q. Mr. Terry, how did your father react to your
7 mother's death?

8 A. My father, like I, was devastated. It made
9 him vulnerable. He met this woman. They had a child
10 together, they named him Drew Terry.

11 Q. Do you have any connection or are you
12 affiliated anyway at all with Drew Terry?

13 A. No, ma'am, absolutely not.

14 Q. Back to boarding school, can you please
15 describe your experience during the first year for the
16 jury?

17 A. My first year of boarding school was
18 difficult. Many of my peers made fun of me being a
19 foreign student.

20 Q. Now, what about your second year, Mr. Terry?

21 A. My second year was a lot better. I was good
22 friends with Reese Blackbird and I was selected among
23 all of my peers to uphold our school's honor code. I

1 was selected to the honor counsel.

2 Q. Now, while in boarding school, did you ever
3 come in contact with Chris Read?

4 A. Yes, ma'am.

5 Q. What was your relationship to Mr. Read while
6 in boarding school?

7 A. Chris Read was particularly cruel to me. He
8 ridiculed me and even stated if you are not American,
9 you don't belong in this boarding school.

10 MR. THOLE: Objection, Your Honor. Move to
11 strike as improper character evidence pursuant to Rule
12 403 -- Pursuant to Rule 406.

13 THE COURT: In response?

14 MS. HARGIS: Yes, Your Honor. This testimony
15 is simply offered to the jury to help them understand
16 the bias Mr. Read has for testifying for the defense.

17 MR. THOLE: Response, Your Honor? This
18 testimony does not go to bias, the testimony is about
19 statements made back in high school, Your Honor. It is
20 more prejudicial than probative. And it does not go to
21 the truthfulness or untruthfulness of Chris Read.
22 Therefore, it is improper character evidence pursuant
23 to Rule 404, as I said earlier, Your Honor.

1 THE COURT: Mr. Read will testify; is that
2 correct?

3 MR. THOLE: Yes, Your Honor.

4 THE COURT: The objection is overruled.

5 BY MS. HARGIS:

6 Q. Yes, Your Honor.

7 And what did Mr. Read tell you while in
8 boarding school?

9 A. He said that only American kids should go to
10 this boarding school. Personally, I did not agree with
11 that. This is America, the land of the free --

12 MR. THOLE: Objection, Your Honor, move to
13 strike that testimony as hearsay.

14 THE COURT: Overruled.

15 BY MS. HARGIS:

16 Q. Yes, Your Honor.

17 Now, was there any particular incident that
18 involved both you and Chris Read?

19 A. Yes. Chris was accused of cheating during the
20 fall semester of his senior year. His case, of course,
21 came before the Honor Counsel and I sat as part of the
22 panel that heard his case. However, the witness that
23 was going to testify against Chris mysteriously left

1 the night before and although we had all supporting
2 evidence against him, it was our policy to dismiss the
3 case.

4 Q. Now, did you eventually graduate from boarding
5 school?

6 A. Yes, ma'am.

7 Q. And did you then attend college?

8 A. Yes, ma'am. Harvard University.

9 Q. Did you eventually graduate from Harvard?

10 A. Yes, ma'am.

11 Q. What did you do after you graduated?

12 A. I decided to stay here in the United States
13 for a few more years, see my friend Reese Balckbird and
14 pursue my Masters in Business Administration.

15 Q. Now, while visiting Reese Blackbird, did you
16 then again come in contact with Chris Read?

17 A. Yes, ma'am.

18 Q. Can you please describe that meeting?

19 A. Well, while Reese and I were walking his dog
20 throughout the neighborhood, we saw Chris in the
21 passenger seat of a vehicle entering a house that
22 Reese's father believed was a safe house for
23 intelligence agents of the United States Government.

1 This is when I realized the rumors that I heard about
2 Chris going to work for an intelligence agency after
3 graduation. After I saw Chris the feeling of how he
4 ridiculed me in board school overwhelmed me. So Reese
5 and I decided to play prank.

6 Q. Mr. Terry, can you describe this prank for the
7 jury?

8 A. Yes. That next week I made sure to make
9 plenty of phone calls using Reese's phone. I would
10 pretend to state how I hated the United States, which
11 is absolutely ridiculous. This is my second home.

12 Q. After making these phone calls, were you ever
13 approached by any authority and questioned about them?

14 A. No, ma'am.

15 Q. Were you ever arrested or prosecuted because
16 of these phone calls that you made?

17 A. No, ma'am.

18 Q. Were you ever denied entry into this country
19 because you made they telephone calls?

20 A. No, ma'am. It was just a prank. Nothing
21 more.

22 Q. And while making those telephone calls, were
23 you highly aware of the high probability that these

1 telephone calls would be intercepted?

2 A. Yes, ma'am. That's why we committed this
3 prank. We wanted Chris Read to intercept these phone
4 calls, approach his superiors with these ludicrous
5 allegations and he would be in trouble for approaching
6 with such ridiculous things.

7 Q. Now, did you eventually return to Aladdin?

8 A. Yes, ma'am.

9 Q. Over your years with MESS, what position or
10 responsibility did you hold?

11 A. I hold various positions of authority
12 throughout our company. However, I gained the
13 presidency from my father.

14 Q. Can you tell the jury a little bit about the
15 economy of Aladdin?

16 A. Yes, ma'am. Our economy is devoted to
17 Capitalism. Just like the United States, we want to
18 prosper, as well.

19 Q. Now, as president, did you ever consider a US
20 presence for your company?

21 A. Yes, ma'am.

22 Q. Did anything hinder you from pursuing this
23 presence?

1 A. Yes, ma'am. At the time I was not in a
2 position to leave my father alone in Aladdin. Having a
3 United States presence would require monthly trips to
4 the United States. I was not in a position to leave my
5 father alone.

6 Q. Did anything happen to your father this past
7 year?

8 A. Yes, ma'am. My father suffered a fatal heart
9 attack after hearing of Drew's latest terrorist
10 atrocities. I blame Drew Terry for killing my father.

11 Q. Mr. Terry, after your father's death, did you
12 then again decide to pursue a US presence for your
13 company?

14 A. Yes, ma'am, at that time it did become
15 possible.

16 Q. With there any particular company that you
17 were interested in?

18 A. Yes, ma'am. The Delaware Auto and Marine
19 Corporation. I routinely followed their trading
20 activity on the New York Stock Exchange.

21 Q. Did you make a decision about an investment in
22 DAM?

23 A. Yes, ma'am. Upon the advice of my attorneys,

1 MESS decided to buy one share of Delaware Auto and
2 Marine, so that the board of directors of Delaware Auto
3 and Marine would owe MESS a fiduciary duty as a
4 stockholder.

5 Q. Now, after buying this share of stock, did you
6 become aware of any precautionary action that DAM has
7 taken in order to prevent such a takeover from an
8 outside company?

9 A. Yes, ma'am. The Delaware Auto Marine
10 Corporation adopted what is known as a Shareholder's
11 right plan or poison pill. They instituted a flip-in
12 method.

13 Q. Please explain this flip-in method for the
14 jury?

15 A. Yes, ma'am. Any outside bidder wanting to
16 have a controlling interest in Delaware Auto and Marine
17 would need to buy 15 percent or more of a common stock
18 to trigger the poison pill. After the 15 percent or
19 more has been bought, the existing stockholders would
20 be issued two additional shares for every one share
21 that they own at prevailing market price.

22 Now, MESS as the acquiring corporation was not
23 able to participate in this flip-in method, but the

1 shares that I eventually owned, if I would have went
2 along with the deal, would have been massively diluted
3 and substantially less valuable.

4 Q. Did you, at any time, make an offer for all
5 the common stock of DAM?

6 A. Yes, ma'am. My initial tender offer was \$16
7 per share. After I made this offer I sent a
8 correspondence to Pat Kent.

9 Q. Did you receive any response from Pat Kent or
10 any of the board of directors from DAM?

11 A. No, ma'am.

12 Q. Did you then make a second offer?

13 A. Yes, ma'am. Despite Pat Kent's silence, we
14 decided to pursue due diligence and raise our offer to
15 \$20 per share.

16 Q. Did you get any response to this offer?

17 A. No, ma'am.

18 Q. Did you become aware of any reason why you did
19 not receive a response to these offers?

20 A. No, ma'am. I was never contacted for not
21 receiving a response. I thought it was rude.

22 Q. Now, has DAM redeemed this poison pill?

23 A. No, ma'am. So on September 1, 2007, I filed

1 this lawsuit in the Court of Chancery here in
2 Wilmington, Delaware.

3 Q. How has DAM responded to this lawsuit?

4 A. Delaware Auto Marine Corporation has made
5 ludicrous claims that my organization, that I and my
6 country have material ties to terrorism.

7 Q. Mr. Terry, does the country of Aladdin have
8 any material ties to terrorism?

9 A. Absolutely --

10 MR. THOLE: Objection, Your Honor. Lack of
11 foundation. The witness does not have the foundation
12 or personal knowledge pursuant to 602 to testify about
13 whether or not the country of Aladdin has material ties
14 to terrorism. Furthermore, it goes to the ultimate
15 issue and usurps the power of the jury pursuant to Rule
16 704.

17 MS. HARGIS: Your Honor, pursuant to Rule
18 701(a) this is well within this witness's rational
19 perception and he has lived in Aladdin for many years
20 and conducted business there.

21 MR. THOLE: Response?

22 THE COURT: Yes.

23 MR. THOLE: Simply because one lives in the

1 country does not give a witness the foundation for the
2 perceptions that Aladdin has no material ties to
3 terrorism, Your Honor. It is an improper lay witness
4 opinion pursuant to 701, lack of personal knowledge,
5 602. Usurps the power of the jury, Your Honor.

6 THE COURT: I will let the jury evaluate that
7 after cross examination. The objection is overruled.

8 BY MS. HARGIS:

9 Q. Yes, Your Honor.

10 Mr. Terry, does the nation of Aladdin have any
11 material ties to terrorism?

12 A. Absolutely not.

13 Q. Does MESS fund any terroristic activities?

14 A. No, ma'am.

15 Q. Do you personally support terrorism?

16 A. No, ma'am. No self respecting person would
17 ever involve themselves with terrorism.

18 Q. Mr. Terry, if MESS is to acquire control of
19 DAM, would this pose any threat to the national
20 security of the United States?

21 MR. THOLE: Objection, Your Honor. Beyond the
22 scope of this witness's expertise. Again, improper lay
23 opinion pursuant to Rule 701, Your Honor?

1 THE COURT: If his corporation were to
2 takeover DAM, or the operations at the Port, he would
3 be the president of the company running it, correct?

4 MR. THOLE: He would, Your Honor.

5 THE COURT: Response?

6 MS. HARGIS: Your Honor I, again, state this
7 is pursuant to Rule 701(a) well within this witness's
8 rationally based perception as he is president of MESS.

9 THE COURT: The objection is overruled.

10 BY MS. HARGIS:

11 Q. Yes, Your Honor.

12 Mr. Terry, if MESS is to acquire control,
13 would this pose any threat to the security of the
14 United States?

15 A. No, ma'am. Upon acquisition of Delaware Auto
16 and Marine, we plan to implement a world-class security
17 system that would not only improve the security of this
18 port, but of this country.

19 MS. HARGIS: Thank you, Your Honor. We have
20 no further questions of this witness.

21 THE COURT: Cross examination.

22 MR. THOLE: Yes, Your Honor.

23 CROSS EXAMINATION

1 BY MR. THOLE:

2 Q. Good evening, Mr. Terry. My name is Gavin
3 Thole and I will be asking you some questions and I am
4 representing Delaware Marine today.

5 A. Yes, sir.

6 Q. Mr. Terry, you are the president of MESS as
7 you testified, correct?

8 A. Yes, sir. Mideast Stevedore Services.

9 Q. And you also said that MESS is organized or
10 operates under the laws of Aladdin, correct?

11 A. Yes, sir.

12 Q. MESS is owned and controlled by Aladdin; isn't
13 that true?

14 A. Yes, sir. 100 percent of our stock is owned
15 by our nation.

16 Q. You testified on direct that you have been
17 considering a US presence for MESS, correct?

18 A. Yes, sir.

19 Q. And you routinely followed Delaware Marine
20 stock, as you said, for a number of years?

21 A. Yes, sir. I have felt that they would
22 compliment Mideast Stevedore Services.

23 Q. Now, Mr. Terry, isn't it true, or you would

1 agree that the value of a company's stock does not
2 necessarily represent the full value of a company,
3 correct?

4 A. Yes, sir. And the stock trading value of
5 Delaware Auto Marine was undervalued.

6 Q. So you would agree that there are intangible
7 assets in a company that are not included in the stock
8 price value?

9 A. Yes, sir.

10 Q. Now, as you just said, you thought that
11 Delaware Marine stock price was actually less than the
12 value of the company, correct?

13 A. Yes, sir. So I wanted to acquire it so that I
14 could take it from good to great.

15 Q. You thought that Delaware Marine, under
16 Mr. Kent's leadership, was worth more than the stock
17 price was showing?

18 A. Yes, sir.

19 Q. That was in the year 2007 that you had that
20 opinion, correct?

21 A. Yes, sir.

22 Q. And on August 1, 2007, you decided to take
23 advantage of that situation, didn't you?

1 A. Yes, sir, because I can take this company from
2 good to great. I could do it under my leadership.

3 Q. On August 1, 2007, your company, MESS, began
4 its hostile takeover of Delaware Marine when the stock
5 price was undervalued, didn't it?

6 A. Yes, sir, but I wouldn't call it hostile
7 takeover. I tried to make this a great merger.

8 Q. Now, Mr. Terry, your family is part of the
9 power base of MESS, would you agree with that?

10 MS. HARGIS: Objection, Your Honor. Pursuant
11 to Rule 402, this testimony is irrelevant.

12 MR. THOLE: Response, Your Honor?

13 THE COURT: First I would like to know why it
14 is irrelevant.

15 MS. HARGIS: Your Honor, whether or not the
16 board of directors is comprised by his family does not
17 make any material fact more or less likely in today's
18 case.

19 MR. THOLE: Your Honor, we expect the witness
20 to agree that his father was the president. He took
21 over the presidency from his father. His brother is a
22 terrorist, and we intend to show that his family is
23 connected to terrorism. The fact that his family is

1 part of the power base of MESS is extremely relevant as
2 it directly goes to the issue of whether or not MESS is
3 connected to terrorism.

4 THE COURT: Objection is overruled.

5 MS. HARGIS: Yes, Your Honor.

6 BY MR. THOLE:

7 Q. Mr. Terry, your father was the president of
8 MESS before you, correct?

9 A. Yes, sir.

10 Q. And he passed the presidency on to you, didn't
11 he?

12 A. Yes, sir.

13 Q. In fact, you even worked at MESS under your
14 father?

15 A. Yes, sir.

16 Q. Your family is part of the power base?

17 A. Yes, sir. We started our corporation.

18 Q. Your brother is an international terrorist,
19 correct?

20 A. No, sir, my half brother is an international
21 terrorist.

22 Q. Your half brother has murdered hundreds of
23 innocent people; hasn't he, Mr. Terry?

1 A. Yes, sir, according to various news accounts.

2 Q. Your half brother has committed some of the
3 most heinous terrorist acts the world has ever seen?

4 A. Yes, sir.

5 Q. Now, were you aware that in Delaware, there is
6 an anti-terrorism law?

7 A. No, sir. I am not an attorney, sir.

8 Q. So it is your claim you were not aware of the
9 anti-terrorism law?

10 A. No, sir. I am not.

11 Q. So then you were not aware of the part of that
12 law that says if a company has material ties to
13 terrorism, another company may not -- choose not to go
14 into business with them. You were not aware of that?

15 A. No, sir. Like I said, I am not an attorney.
16 All I know is I wanted to acquire this company because
17 I wanted to take it from good to great. Our country
18 wants to prosper just like the US.

19 Q. Mr. Terry, I'd appreciate it if you answer the
20 questions I am asking you only.

21 Now, you have testified that you -- that MESS
22 is owned and controlled by Aladdin. Were you aware
23 that your terrorist brother Drew Terry has met

1 face-to-face with the prime minister of Aladdin?

2 A. No, sir.

3 Q. You were not aware of that?

4 A. No, sir, not at all.

5 Q. Now, you testified on direct about a -- you
6 testified that Mr. Kent, the CEO Delaware Marine, did
7 not respond to your initial \$16 offer. Did I
8 understand your testimony correctly?

9 A. Yes, sir.

10 Q. Were you aware that Pat Kent publically
11 denounced the offer after it was made?

12 A. No, sir.

13 Q. So you were not aware that Mr. Kent did speak
14 to the offer, he just did not contact you about it?

15 A. No, sir. I am not aware of that. I don't see
16 why he did not respond to me personally.

17 Q. I understand, Mr. Terry. Now, you also
18 testified that Mr. Kent and the Board of Delaware
19 Marine did not respond to the second offer of \$20,
20 correct?

21 A. Yes, sir.

22 Q. But you admit that the second offer of \$20
23 from MESS was made simultaneously with the filing of

1 this lawsuit, correct?

2 A. Yes, sir.

3 Q. Were you aware that in the complaint that MESS
4 filed, your company in this case, MESS, already knew
5 that Delaware Marine had relied upon the anti-terrorism
6 statute?

7 A. Yes, sir. I believe so.

8 Q. So at the time your company made this \$20
9 offer, you already knew that Delaware Marine had relied
10 upon the anti-terrorism statute and could not in good
11 faith accept your offer?

12 A. As I said, sir, I don't know anything about
13 the statute. However, my counsel did.

14 Q. You admit that the offer and this lawsuit were
15 simultaneous?

16 A. Yes, sir. The \$20 offer and this lawsuit were
17 simultaneous.

18 Q. Now, Mr. Terry, you also testified about
19 making a prank phone call on direct, correct?

20 A. Yes, sir.

21 Q. Now, you are aware now that Mr. Read, Agent
22 Read is an Agent or was an Agent of the External
23 Defense Agency, correct?

1 A. Yes, sir. I was only aware of that through
2 rumors, though.

3 Q. So you weren't sure?

4 A. No, sir, not at the time. However, I heard
5 from friends that he was.

6 Q. So you want this jury to believe that you made
7 a phone call that was wire tapped by Mr. Read, and that
8 you somehow knew he belonged to a secret government
9 agency through rumor?

10 A. Yes, sir. My friends told me so. I believed
11 it.

12 Q. You want this jury to believe that you somehow
13 knew that this secret Agent was wire tapping your
14 phone?

15 A. Well, yes, sir.

16 Q. You want this jury to believe that somehow you
17 were aware that Mr. Read was in the safe house next
18 door, that it was a safe house?

19 A. Yes, sir. I saw him pull into the driveway of
20 that home.

21 Q. You claimed it is a prank. It is important
22 for the jury to hear the words that you spoke about our
23 country exactly. On October 14th, 1998 in a response

1 to the question "Will someone attack --

2 MS. HARGIS: Objection, Your Honor. At this
3 time counsel is going into the contents of a document
4 that has not already been admitted into evidence.

5 MR. THOLE: Your Honor, may I direct the
6 Court's attention to Rule 613.

7 THE COURT: Yes.

8 MR. THOLE: Pursuant to Rule 613, Your Honor,
9 a witness may be questioned concerning a prior
10 statement without showing the witness the prior
11 statement. Opposing counsel does have the right to see
12 it pursuant to that rule if she wishes. Furthermore,
13 Your Honor, it is not necessary that the Exhibit be in
14 evidence or questions about this witness's personal
15 knowledge to be based upon it. It is important that
16 you have the opportunity at this point in the trial to
17 deny the statements or admit the statements in this
18 Exhibit. We will not have the opportunity to recall
19 this witness after the Exhibit is admitted. So we ask
20 that the Court take this conditionally, Your Honor.

21 THE COURT: Objection is overruled.

22 BY MR. THOLE:

23 Q. Yes, Your Honor.

1 Mr. Terry, on October 14, 1998, in response to
2 the question "Will someone attack the US?" You said,
3 "Well, I'm not going to say that I have any solid
4 information, but it certainly would bring me great
5 pleasure if it did happen." Didn't you?

6 A. Yes, sir. I stated that. However, I stated
7 that while in the course of a prank.

8 Q. In response to the same question you said, "I
9 have lived here since I was 14, and each day the hatred
10 grows. It is becoming close to unbearable." Didn't
11 you?

12 A. Yes, sir. Once again, I stated that while
13 committing a prank against Chris Read.

14 Q. And you want this jury to believe this is a
15 prank against a secret agent less than three years
16 before 9/11 in response to the question; "Why don't you
17 go back to Aladdin?"

18 A. Yes, sir.

19 Q. You said "I am thinking of doing that, but as
20 much as I hate this country, I still need to learn more
21 about it. If I am going run my father's company after
22 him, I need to know the available markets." Didn't
23 you?

1 A. Yes, sir. I stated that while in the course
2 of a prank. Chris Read was cruel to me.

3 Q. Mr. Terry, would you agree there is some
4 things you just don't say unless you truly believe
5 them?

6 A. No, sir. In this case it was a prank. I did
7 not believe them.

8 MR. THOLE: Nothing further.

9 THE COURT: Any redirect?

10 MS. HARGIS: No redirect, Your Honor.

11 THE COURT: You may step down.

12 MS. PARKHOUSE: At this time the plaintiff
13 calls Sam Rodney to the stand.

14 (Witness was previously sworn.)

15 DIRECT EXAMINATION

16 BY MS. PARKHOUSE:

17 Q. Good evening. Can you please introduce
18 yourself to the jury?

19 A. Good evening, my name is Sammy Rodney. I am a
20 member of the Deloitte Earnst KPMG Coopers, LLC
21 accounting firm. Also known around the accounting
22 world as "The Big One."

23 Q. Are you a certified public accountant, Mr.

1 Rodney?

2 A. Yes, ma'am. I am Certified Public Accountant
3 or CPA.

4 Q. Have you ever testified in any previous court
5 proceedings in your capacity as a certified public
6 accountant?

7 A. Ma'am, I have testified as an expert in so
8 many valuation matters, they ought to give me my own
9 parking space out in front of the courthouse.

10 Q. Would you please explain to the jury exactly
11 what you mean by valuation matters?

12 A. Well, ma'am, valuation matters are simply
13 where you look at business or corporations and
14 determine how much it should sell for in the market.

15 Q. Have you ever been retained by either party in
16 today's case, Mr. Rodney?

17 A. Yes, ma'am. The plaintiff, Mideast Stevedores
18 Services, Incorporated or MESS.

19 Q. For what purpose has MESS retained you?

20 A. Simply to determine whether or not Delaware
21 Auto and Marine Corporation, or DAM, will ever be able
22 to reach the \$20 per share offer currently laid on the
23 table by MESS.

1 Q. Mr. Rodney, does your compensation for
2 testifying in today's case rely upon the opinion to
3 which you come or the outcome of the case?

4 A. No, ma'am. Regardless of what happens here
5 today, I will still receive compensation for all my time
6 and hard work.

7 Q. Based on your training and experience as a
8 certified public accountant, do you have an expert
9 opinion as to whether or not the stock market price of
10 DAM is likely reach that price being offered by MESS?

11 A. Yes, ma'am, and my expert opinion under
12 current management, it never will.

13 Q. Did you rely on any documents in forming this
14 expert opinion, Mr. Rodney?

15 A. Yes, ma'am.

16 Q. Can you please explain for the jury what those
17 documents were?

18 A. I used the business plan, I use that term
19 loosely, of Pat Kent for the DAM Corporation, as well
20 as the stock price history of DAM, as well as my own
21 valuation analysis of different comparable lines of
22 business or comps. That is businesses which have sold
23 recently that are very similar to the DAM Corporation.

1 I also looked a several other different research
2 investment periodicals, specifically the Zaches
3 Investment Research.

4 Q. Are all of these documents, and periodicals of
5 the type which a certified public accountant normally
6 relies upon in making these valuations analyses?

7 A. Yes, ma'am, any good CPA uses them.

8 Q. Did you keep all of these documents in your
9 regular course of business in working with MESS?

10 A. Yes, I did.

11 MS. PARKHOUSE: Your Honor, let the record
12 reflect I am showing opposing counsel premarked
13 Exhibits 1, 2 and 3.

14 THE COURT: Very well.

15 BY MS. PARKHOUSE:

16 Q. May I approach the witness for identification
17 purposes?

18 THE COURT: Yes.

19 BY MS. PARKHOUSE:

20 Q. Mr. Rodney, can you please identify Exhibit 1
21 for the jury?

22 A. Exhibit 1 is the business plan of Pat Kent for
23 Delaware Auto and Marine Corporation.

1 Q. Can you please identify Exhibit 2 for the
2 jury?

3 A. Exhibit 2 is my valuation analysis of
4 different comparable lines of business.

5 Q. And can you please identify Exhibit 3?

6 A. Exhibit 3 is the stock price issued of the DAM
7 corporation ranging from 1985 to present day.

8 Q. Are these the exact documents upon which you
9 relied in forming your expert opinion in today's case?

10 A. Yes, ma'am they are.

11 MS. PARKHOUSE: Your Honor, at this time the
12 plaintiff tenders into evidence Exhibits 1, 2 and 3,
13 their accuracy and authenticity has been stipulated.

14 MS. TEUTSCH: No objection, Your Honor.

15 BY MS. PARKHOUSE:

16 Q. May the witness step down for demonstrative
17 purposes for Exhibits 2 and 3?

18 THE COURT: Yes.

19 BY MS. PARKHOUSE:

20 Q. Mr. Rodney, can you please use Exhibit No. 3
21 to show the jury how you used it in forming your expert
22 opinion in today's case?

23 A. Yes, as you can see this is the stock price

1 history of the Delaware Auto and Marine Corporation.

2 In 1985, they had an Initial Public Offering, or IPO of
3 \$5 per share. In the year 2000 --

4 THE COURT: Excuse me, one minute. Opposing
5 counsel may move to see what the witness is pointing
6 to, if you wish.

7 MS. TEUTSCH: Thank you, Your Honor. How
8 close is it permissible for me to be to the jurors?

9 THE COURT: If they are using an Exhibit and
10 showing it to the jury and demonstrating in some way
11 what it infers to mean, you can get close enough to see
12 what the witness is doing with that Exhibit.

13 MS. TEUTSCH: Thank you, Your Honor.

14 THE WITNESS: As you can see, in the year 2000
15 they were able to approach a peak high of \$22 per
16 share, which is not bad, but hey, even a blind squirrel
17 finds a nut every once in awhile. After the
18 September 11th terrorist attacks the stock price of DAM
19 plummeted to around \$13 per share. However, it dropped
20 since then and is currently hovering around \$10 to \$11
21 dollars per share.

22 BY MS. PARKHOUSE:

23 Q. Now, how does the stock market price of DAM

1 respond after MESS made its first and second cash offer
2 to the common stock of DAM.

3 A. After the first tender offer of \$16 per share,
4 the stock price only went up 50 cents to \$11 per share.
5 After the second offer of \$20 dollars per share, it
6 only went up another 50 cents to \$11.50 per share.
7 This indicates that the market has absolutely no
8 confidence in DAM as a corporation in its current
9 state.

10 Q. Thank you.

11 Please use Exhibit No. 2 and explain for the
12 jury how you used it in forming your expert opinion in
13 today's case?

14 A. Yes, ma'am. This is my valuation analysis of
15 different comparable lines of business very similar to
16 DAM. As you can see, the California Port sold in 2004
17 for \$14 per share, and the Florida Port sold in 2005
18 for \$12 per share. This is why I believe the \$20 per
19 share by MESS is definitely more than generous. Now,
20 the Texas Port did sell in 2006 for \$25 per share.
21 However, there is a very good reason for that. You
22 see, the Texas Port has something that none of these
23 other ports have, that is a highly specialized

1 commodity, Texas Hold'em playing cards.

2 Q. Why did you choose to include air shipping
3 companies in your list of comparable businesses?

4 A. Well, ma'am, the air transport businesses are
5 technically comparable as they do deal with shipping.
6 However, the main reason I put them there was to show
7 the contrast between marine and air transport. As you
8 can see, the average for marine transport is \$17 per
9 share, while the average for air transport is \$21 per
10 share. This indicates that air transport is starting
11 to take off, if you will, while marine transport is
12 starting to sink.

13 Q. Thank you. You may be seated.

14 Mr. Rodney, using Exhibits 2 and 3, can you
15 please tell the jury what this stock market price of
16 DAM was at the time the California Port sold in 2004
17 for \$14 per share?

18 A. It was \$10.50 per share.

19 Q. What was the stock price of DAM at the time
20 that the Florida Port sold in 2005 for \$12 per share?

21 A. \$10 per share.

22 Q. And at the time of the Texas Port was able to
23 sell for \$25 per share in 2006, what was the stock

1 market price of DAM?

2 A. Still \$10 per share.

3 Q. Thank you. Can you please explain for the
4 jury how you use Exhibit 1, Pat Kent's business plan,
5 in forming your expert opinion today?

6 A. Well, when I looked throughout Mr. Kent's
7 business plan, and his three action steps, and frankly,
8 he just needs to take it back to Kinko's and get a
9 refund. It is not even worth the paper it is printed
10 on.

11 MS. TEUTSCH: Objection, Your Honor. This
12 testimony is beyond the scope of this witness's
13 expertise. He does not have a degree in business. He
14 cannot testify as to the viability of the business plan
15 as a whole. As an expert in business valuation and as
16 certified public accountant, he can certainly testify
17 as to the financial viability of the plan, but as a
18 whole, it is improper for him to testify to this plan
19 because he does not have the expertise to do so.

20 MS. PARKHOUSE: Your Honor, pursuant to Rule
21 702, this is well within his area of expertise as he
22 has, in fact, been hired to perform the valuation
23 analysis in which he investigated DAM's likelihood of

1 success in increasing its stock market price using the
2 three Exhibits and including using Pat Kent's own
3 business plan. He can make this assessment of the
4 business plan.

5 MS. TEUTSCH: Response?

6 THE COURT: Yes.

7 MS. TEUTSCH: This witness was hired to value,
8 determine the value of Delaware Marine as a
9 corporation, and its future value. He can testify as
10 to the financial aspect of the business, but as to the
11 plan itself, he does not have the expertise to testify
12 as he does not have a degree in business and has not
13 been qualified answer as an expert in business.

14 THE COURT: Have you established that this is
15 information that a certified public accountant would
16 ordinarily rely on in reaching a conclusion about
17 valuation?

18 MS. PARKHOUSE: Yes, Your Honor. As pursuant
19 to Rule 702, he is simply making a conclusion as to the
20 financial success of DAM under this business plan.

21 THE COURT: I will let the jury evaluate the
22 extent to which his specific professional degrees and
23 experience tends to make more likely or not his opinion

1 of the business plan. The objection is overruled.

2 BY MS. PARKHOUSE:

3 Q. Yes, Your Honor.

4 Now, what do you predict about the likelihood
5 of DAM's financial success under this business plan,
6 Mr. Rodney?

7 A. Well, ma'am, the chances are slim to none and
8 I think I just saw slim go out the door. If you look
9 at his plan you will see that it is full of
10 contingencies, that as things go out of control of Pat
11 Kent and DAM Corporation.

12 Q. Now, in working with MESS, did you have the
13 opportunity to visit the nation of Aladdin?

14 A. Yes, ma'am, several times.

15 Q. Were your flights ever restricted to daytime
16 hours?

17 A. No, ma'am. I flew in and out both day and
18 night, just like any regular airport.

19 Q. In fact, are you aware of the financial
20 likelihood that they will receive any sort of funding
21 for this plan at this point if time, Mr. Rodney?

22 A. Yes, ma'am. Chances are highly unlikely. Pat
23 Kent has already been turned down for funding several

1 times already.

2 Q. In fact, you mentioned that Zaches -- that you
3 relied upon Zaches Investment Research periodical in
4 forming your expert opinion. What did the Zaches
5 Investment Research indicate about DAM's likelihood of
6 financial success at this point in time?

7 A. They said that this plan was way too big for
8 DAM's financial britches. Now, my advice, if he can
9 put it back on the rack and start looking at the kids
10 section, because there is no way they can meet the
11 requirements of this plan.

12 MS. PARKHOUSE: Thank you, Your Honor. I have
13 no further questions at this time.

14 THE COURT: Cross examine.

15 MS. TEUTSCH: Yes, Your Honor.

16 CROSS EXAMINATION

17 BY MS. TEUTSCH:

18 Q. Good evening, Mr. Rodney.

19 A. Good evening.

20 Q. Now, your experience is in business valuation,
21 correct?

22 A. That is correct.

23 Q. You don't claim to be an expert in the stock

1 market?

2 A. Yes, ma'am, I am a certified public
3 accountant.

4 Q. But you have not been qualified an expert in
5 the stock market?

6 A. Yes, ma'am. As I do perform valuation
7 analysis, and have testified as an expert in different
8 valuation cases.

9 Q. Valuation analysis does not encompass
10 expertise in the stock market, does it, Mr. Rodney?

11 A. Yes, it does.

12 Q. Mr. Rodney, you were hired by MESS in this
13 case, weren't you?

14 A. That is correct, M-E-S-S.

15 Q. When MESS hired you, it agreed to paid you
16 half a million dollars?

17 A. That is correct, for all my time and hard
18 work.

19 Q. Half a million dollars is about half of your
20 income for the year, isn't it?

21 A. Yes, ma'am, just about.

22 Q. MESS is paying you about half of your yearly
23 income for your hard work and testimony in this one

1 case; is that correct?

2 A. That is correct.

3 Q. Now, when MESS hired you, it did not instruct
4 you to estimate the current value of Delaware Marine?

5 A. Yes, ma'am. That's part of the reason I was
6 hired to determine whether or not it could reach the
7 \$20 per share offer. You have to look at its current
8 state to determine that.

9 Q. You did not estimate the current value of
10 Delaware Marine. You were asked instead to estimate
11 Delaware Marine's future stock price; isn't that
12 correct.

13 A. Yes, ma'am. I have that current stock price
14 right here.

15 Q. You understand, certainly, that there is a
16 difference between a business's value and its stock
17 price, don't you?

18 A. Yes, ma'am.

19 Q. Therefore, you did not estimate the current
20 value of Delaware Marine beyond that of its current
21 stock price?

22 A. I myself, no.

23 Q. Rather than in being instructed to estimate

1 Delaware Marine's current value, you were asked to
2 predict its future stock price?

3 A. That is correct.

4 Q. MESS did not limit its instruction to the next
5 few years?

6 A. No, ma'am.

7 Q. MESS, instead, asked to you determine whether
8 or not Delaware Marine's stock prize would ever reach
9 its \$20 offer?

10 A. Yes, ma'am, it never will.

11 Q. Now, there are many unknowns in the stock
12 market, aren't there?

13 A. Yes.

14 Q. You certainly don't claim to be a fortune
15 teller?

16 A. No, ma'am. I can't say I am clairvoyant or
17 anything.

18 Q. Predicting a company's stock price even a year
19 or two in the future requires guess work, doesn't it?

20 A. Yes ma'am, and expertise in the field.

21 Q. You cannot state definitively what Delaware
22 Marine's stock price will be a year or two from now?

23 A. No, ma'am, but I can give you a very good

1 estimate if you look at their historically weak stock
2 price.

3 Q. But when you talk about predicting if a
4 company's stock price will ever reach a certain value,
5 you must agree that that prediction is nothing more
6 than a wild guess because, as you said, you are not
7 clairvoyant?

8 A. No, ma'am, I wouldn't say a wild guess as you
9 do have to look at all the past history of the stock
10 market.

11 Q. Is it your testimony that you can predict a
12 company's stock price into the unforeseeable future and
13 yet you are not clairvoyant?

14 A. No, ma'am. That is not what I said.

15 Q. Well, you offered an opinion in this case that
16 you could predict the company's stock price into the
17 unforeseeable future?

18 A. Yes, ma'am, based on all the evidence I have
19 seen.

20 Q. So it is your testimony that you can't predict
21 the company's value into the unforeseeable future, yet
22 you are willing to sit on that witness stand today and
23 tell the jury that you can?

1 A. No, ma'am. I making a prediction based on all
2 of the evidence that I have seen.

3 Q. Well, let's move on talk about reality for a
4 moment, shall we.

5 You testified on direct that you examined
6 Delaware Marine's stock price history?

7 A. That is correct.

8 Q. From 1986 until 2000, the stock price rose
9 consistently every year?

10 A. Yes, ma'am. 1985 to 2000.

11 Q. In 2000, the stock price traded at \$22 per
12 share?

13 A. Yes, that is correct.

14 Q. Delaware Marine stock price has already traded
15 at a price higher than MESS's offer?

16 A. Yes, ma'am. However, that was merely decades
17 ago.

18 Q. Yes, now, you also testified that you examined
19 the comps, companies and comparable lines of business
20 as part of your valuation analysis?

21 A. Yes, ma'am, I did.

22 Q. You testified that the Texas Port sold in 2006
23 for \$25 per share?

1 A. Yes, ma'am.

2 Q. And you are stated the reason for that was
3 because none of other Ports have the Texas Hold-em
4 cards; is that correct?

5 A. Correct.

6 Q. Were your aware that Delaware Marine has
7 already received a shipment of Texas Hold-em cards?

8 A. Ma'am, I have seen no evidence of that
9 whatsoever.

10 Q. If Delaware Marine had already received a
11 shipment of Texas Hold-em cards, would that change your
12 opinion?

13 A. No, ma'am, it certainly would not. The only
14 reason the Texas port sold for as much as it did was
15 because they had a highly specialized commodity. If
16 several ports had Texas Hold-em cards, it wouldn't be a
17 specialized commodity anymore.

18 Q. Now, the Texas Port also sold for \$25 per
19 share, its shipping lanes were dredged?

20 A. Yes, ma'am.

21 Q. You are aware, as you testified on direct, you
22 are aware of Delaware Marine's business plan to dredge
23 its shipping lanes?

1 A. That is correct, but I have seen no evidence
2 that it is going to happen.

3 Q. If Delaware Marine's plan to dredge is
4 successful, it could increase the value of Delaware
5 Marine's stock?

6 A. It could, but you have to remember this plan
7 is on a ten-year roll out. If it is even marginally
8 successful, it will not do the shareholders any good at
9 all.

10 Q. Mr. Rodney, you do not -- you are not an
11 expert in business in general, are you?

12 A. No, ma'am, but corporate financing I am an
13 expert in.

14 Q. You are not an expert in business in general,
15 yet you can testify as to the viability of the plan as
16 a whole, even though you only have expertise in the
17 finances?

18 A. Yes, ma'am. Because that is basically what
19 this is for to improve the finances of the DAM
20 Corporation.

21 Q. If Delaware Marine plans to dredge is
22 successful, as you said it may be, it is possible that
23 it could increase the value of Delaware Marine's stock

1 past that of MESS's \$20 offer?

2 A. Ma'am, it could, but I see no evidence it is
3 going to happen anyway.

4 MS. TEUTSCH: I have nothing further.

5 THE COURT: Any redirect?

6 REDIRECT EXAMINATION

7 BY MS. PARKHOUSE:

8 Q. Yes, Your Honor.

9 Mr. Rodney, are you now testifying to the
10 future success of DAM for the rest of its existence, or
11 rather through the likelihood of its success under
12 current management?

13 A. Just under its current management.

14 Q. Based on the trend of marine shipping, when is
15 the likelihood that although DAM had reached its stock
16 market price of \$22 at one point in time, they will
17 receive that price again?

18 A. In its current state, it never will.

19 MS. PARKHOUSE: Thank you, Your Honor. No
20 further questions.

21 THE COURT: Next witness.

22 MS. HARRIS: At this time the plaintiff calls
23 Erin Sussex to the stand.

1 (Witness was previously sworn.)

2 BY MS. HARRIS:

3 Q. Please introduce yourself to the jury?

4 A. My name is Erin Sussex. I am 59 years old,
5 proud of it. I live in Wilmington, Delaware. I am a
6 stockholder in DAM, also known as Delaware Auto and
7 Marine.

8 Q. Mr. Sussex, what is your educational
9 background?

10 A. I graduated from Wilmington High School in
11 1966. I vividly remember that because during that time
12 they were playing Good Vibrations by the Beach Boys.
13 Old Sussex had the grooves and moves. I say I still
14 have it. You still got it.

15 Q. Are you currently employed?

16 A. No, ma'am. I retired six-months ago after
17 giving DAM a good 40 years.

18 Q. Now, did you -- what was your original
19 position at the company DAM?

20 A. I started off as an office worker pretty much
21 did whatever my boss told me to do, did a lot of
22 errands, boss told me to make him coffee, I would ask
23 how many scoops do you want, how many scoops of sugar

1 do you want? If he asked me to pick up his laundry and
2 his car, I would do just that.

3 Q. Did you have any other aspirations within the
4 company?

5 A. Yes, ma'am. As you can imagine that
6 necessarily wasn't my dream job. I always wanted to
7 work on the docks where they unloaded and loaded cargo
8 from around the world.

9 Q. Did you eventually become a dock worker?

10 A. Yes, ma'am, I did.

11 Q. At the time of your retirement, what was your
12 position on the dock?

13 A. Warehouse foreman where I directed the
14 unloaded cargo into the various warehouses.

15 Q. Mr. Sussex, while warehouse foreman, did you
16 work for any particular port?

17 A. Yes, ma'am, the Port of Wilmington.

18 Q. Can you please describe the Port of Wilmington
19 for the jury?

20 A. Yes, ma'am, if I had to describe the Port of
21 Wilmington with one word, it would be definitely be
22 busy. We handle 400 vessels per year, that occupies
23 approximately 300 acres of land.

1 Q. How many warehouses did the Port have?

2 A. About five warehouses, two of which are
3 temperature controlled.

4 Q. During your employment at the company DAM, was
5 there ever any security breaches?

6 A. Yes, two big ones to my knowledge.

7 Q. Can you please describe these incidents for
8 the jury?

9 A. Yes, ma'am. We had some yahoos sneak into our
10 warehouse and steal some tennis shoes from one of our
11 warehouses and end up having to get that fixed and then
12 we had a severe fire ant problem with a shipment of
13 bananas from South America. Pretty big deal, we had to
14 call bio terrorism authorities and Custom agents.

15 Q. Are there any specific safety requirements at
16 the company DAM?

17 A. Yes, ma'am. DAM requires employees to wear
18 identification badges to allow them to gain access to
19 the various warehouses.

20 Q. What are these badges exactly used for?

21 A. They are supposed to prevent unauthorized
22 personnel from getting in, but I will admit I did use
23 my children's identification badges to get in to see

1 some of my good old buddies.

2 Q. How would you describe your experiences at the
3 company, DAM.

4 A. Good company to work for. That is why I spent
5 my 40 years there.

6 Q. Who is the founder of DAM?

7 A. Mr. Pat Kent.

8 Q. Have you ever come in contact with Pat Kent?

9 A. Yes, I would run into Mr. Kent on the docks
10 and we would have conversations.

11 Q. Mr. Sussex, are you familiar with Jamie
12 Newcastle?

13 A. I am familiar with Newcastle.

14 Q. What is Mr. Newcastle's position at the
15 company?

16 A. Surprisingly, he is the head of security.

17 Q. Will you please explain to the jury exactly
18 why you just stated "surprisingly?"

19 A. Yes, ma'am. Back in those days while
20 Newcastle was working, there was a bit of a pilfering
21 problem.

22 Q. Can you please elaborate?

23 A. Yes, ma'am, a couple years ago while Jamie and

1 I were working for DAM, we received some Sony
2 televisions. He had them sitting out in the warehouse.
3 They were good televisions. They had all these gadgets
4 and gizmos on them, buttons. Back in my day we had to
5 get up from where we were, and go up to the knob and
6 had to turn it, had this big thing in the back, and the
7 rabbit ears -- nonetheless, they were good televisions.

8 Q. Were you ever able to observe these TVs in
9 stock again -- were you able -- were you ever able to
10 see these TVs again?

11 A. Yes, Jamie invited me to go to a Super Bowl
12 party that he was hosting. I noticed the same
13 television that we received at the warehouse, same make
14 and model and everything. I went up to Jamie and I
15 asked him, hey, where did you get the television from,
16 just out of curiosity. He told me Sears.

17 Q. Did you eventually go to Sears?

18 A. Yes, ma'am, to try to compare the prices. I
19 wanted one myself. It was a nice television.

20 Q. Mr. Sussex, were you able to observe these TVs
21 in stock and compare the prices?

22 A. No, ma'am, they weren't even in stock yet,
23 kind of gave me the raised eyebrow about Mr. Newcastle.

1 Q. And, Mr. Sussex, have you become aware of an
2 offer that MESS has proposed to DAM?

3 A. Yes, ma'am, \$20 per share.

4 Q. When you first heard about this offer, what
5 did you do?

6 A. I e-mailed Mr. Kent hoping that he would
7 protect a long-standing family member.

8 Q. Did you get a response from Mr. Kent?

9 A. No, I received a response from one of his
10 assistants. I guess he didn't have time for Mr.
11 Sussex.

12 MS. HARRIS: Your Honor, let the record
13 reflect I am now showing opposing counsel what has been
14 premarked as Exhibit 6. May I approach the witness for
15 identification purposes?

16 THE COURT: Yes, please.

17 BY MS. HARRIS:

18 Q. Mr. Sussex, without going into the content of
19 Exhibit 6, can you please identify Exhibit 6 for the
20 jury?

21 A. Yes, ma'am, this is the response I received
22 from Mr. Kent's assistant.

23 Q. Your Honor, at this time plaintiff tenders

1 Exhibit 6 into evidence. It's accuracy and
2 authenticity have been stipulated.

3 MS. LEVINE: No objection, Your Honor.

4 THE COURT: It is admitted.

5 BY MS. HARRIS:

6 Q. Yes, Your Honor.

7 Mr. Sussex, can you please read aloud to the
8 jury the response that you received from Pat Kent's
9 assistant?

10 A. I did not bring my glasses today, but I'll
11 give it my best shot.

12 "Dear Erin; Mr. Kent asked me to respond to
13 your message. As you can imagine, Pat is very busy
14 right now, but asked me to tell you that it is not
15 happening. Perry White and Lois Lane are among Pat's
16 closest friends and he continues to make sure that they
17 will act appropriately to dispose of Aladdin's
18 scandalous offer."

19 Q. Mr. Sussex, was there any particular reason
20 that you sent Pat Kent this e-mail?

21 A. Yes, ma'am, so I can help my granddaughter.

22 Q. Can you please elaborate?

23 A. Yes, she suffers from a genetic disease. Her

1 growth is stunted. She needs an experimental drug that
2 costs \$10,000 per year.

3 Q. Now, if the stock were to sell for its current
4 price, would you be able to afford this experimental
5 drug?

6 A. It would be extremely hard.

7 Q. You are a shareholder with the company. How
8 much have you invested?

9 A. Every since I have worked for this company I
10 have invested. Some years I invested \$100. Some years
11 I invested \$1,000. My stock in DAM is 90 percent of my
12 life savings.

13 Q. How much do you stand to make if this proposed
14 purchase goes through?

15 A. Almost \$150,000.

16 Q. Mr. Sussex, prior to sending Pat Kent this
17 e-mail, did he ever admit anything to you about the
18 sale of his company Delaware Auto and Marine?

19 A. I tell you what he said, he said he treats
20 this company just like one of his children. That he
21 would never sell it no matter what the price.

22 MS. HARRIS: No further questions, Your Honor.

23 MS. LEVINE: Cross examination, Your Honor?

1 THE COURT: Yes.

2 CROSS EXAMINATION

3 BY MS. LEVINE:

4 Q. Good evening, Mr. Sussex.

5 A. Good evening.

6 Q. Now, you heard Mr. Rodney testify that there
7 was no ship load of Texas Hold-em cards. Is it not
8 true Delaware Marine has received a shipment of Texas
9 Hold-em cards?

10 A. Yes, ma'am. Let's not get carried away. It
11 would be one boat load of Texas Hold-em cards. DAM
12 believes in those cards like my grand children believe
13 in Santa Clause.

14 Q. Mr. Sussex, you testified that you worked at
15 Delaware Marine for 40 years?

16 A. Yes, ma'am, ever since I was 19 years old.

17 Q. You testified you knew Mr. Kent?

18 A. Yes.

19 Q. You knew Mr. Kent as a good person?

20 A. Yes, ma'am.

21 Q. Someone you considered down to earth?

22 A. Yes, but as of right now he has his head in
23 the clouds.

1 Q. Mr. Sussex, I would like you to, please,
2 answer the question that I am asking you.

3 You considered Mr. Sussex to be down to earth,
4 didn't you?

5 A. Yes and, again, he has his head in the clouds.

6 Q. Now, you would agree that under Mr. Kent's
7 leadership, you prospered?

8 A. Yes, I did.

9 Q. You began working on the docks and you were
10 only making \$6 an hour?

11 A. At first and then I ended up getting that
12 payment increased.

13 Q. And by the time you were retired you were
14 making \$75 an hour?

15 A. Yes, ma'am. That is after giving DAM a good
16 40 years. I worked for that.

17 Q. Delaware Marine also allowed you to buy stock
18 in their company?

19 A. Yes, since I worked for it.

20 Q. And under Mr. Kent's leadership, Delaware
21 Marine also prospered?

22 A. I believe so. Yes, ma'am.

23 Q. From 1985 through 2000, the stock prices rose

1 consistently?

2 A. Not sure about that, ma'am.

3 Q. DAM's stock price -- is it your testimony that
4 as a stockholder you are not sure how the stock price
5 has risen throughout the years?

6 A. I didn't necessarily keep up with it all the
7 years. So I am not too familiar with where it started
8 off at in 1985.

9 Q. Are you aware that Delaware Marine's stock is
10 already traded at a high of \$22 per share?

11 A. Yes, ma'am, I am kind of familiar with that.

12 Q. So you are aware, then, that Delaware Marine's
13 stock has already traded higher than the \$20 per share
14 offered by Stevedore Services?

15 A. With that I am not too familiar with. You'll
16 have to forgive me, my memory is not all that good.

17 Q. Well, Mr. Sussex, you would agree that \$20 per
18 share is less than \$22 per share, wouldn't you?

19 A. I can do math, I don't get that confused.

20 Q. So Stevedore Service's offer of \$20 per share
21 is less than the current -- then how high DAM's stock
22 has been trading in the past, correct?

23 A. Yes, I believe so.

1 Q. Now, Mr. Sussex, please understand that we all
2 sympathize with you and your family over your grand
3 daughter's illness. We wish only the best for you and
4 your grand daughter, but don't you believe that
5 Delaware Marine's board of directors must consider the
6 best interest for all of the stockholders when
7 considering the offer?

8 A. Yes, ma'am and Mr. Kent is not doing that.
9 That is the problem that we are having here today.

10 Q. Mr. Sussex, the board of directors must
11 consider not based only on the personal circumstance of
12 one stockholder?

13 A. I don't believe so, but can you help me out
14 here, ma'am?

15 Q. No matter how compelling that stockholder's
16 needs are, Delaware Marine's board must follow the best
17 interest of all stockholders?

18 A. Yes. And again, that is the problem, Mr. Kent
19 is not doing that.

20 Q. Mr. Sussex, do you know that Delaware Marine's
21 board must make its decision based on the best interest
22 of all the stockholders in the long term?

23 A. Yes. But, again, Mr. Kent is not doing that.

1 Q. Do you also understand that the board of
2 directors must make their best -- must make their
3 interest -- must make their decision based on the best
4 interest of national security?

5 A. Yes, I believe so. Yes, ma'am.

6 Q. Now, you testified that the Port of Wilmington
7 is one of the busiest ports?

8 A. Yes, it is.

9 Q. The Delaware River is a huge port for
10 international shipping?

11 A. Yes, ma'am, it is.

12 Q. And the Port of Wilmington is within driving
13 distance of Washington, D.C.

14 MS. HARRIS: Objection, Your Honor pursuant to
15 Rule 402, this is irrelevant.

16 MS. LEVINE: Your Honor, pursuant to Rule 401,
17 this is relevant as an issue in this case is whether
18 Stevedore Services is connected to terrorism, and it is
19 their material tie to terrorism would pose a threat to
20 national security. The proximity of the Port of
21 Wilmington to New York City and Washington, DC the
22 financial and political capitals of this world is
23 extremely relevant as it goes to the fact that if

1 Stevedore Services controls the Port of Wilmington,
2 they could make an easy attack at the heart of the
3 country.

4 THE COURT: Well, your question is simply does
5 he know how close the Port is to Washington, DC,
6 correct?

7 MS. LEVINE: Yes, Your Honor.

8 THE COURT: The objection is overruled.

9 MS. HARRIS: Yes, Your Honor.

10 BY MS. LEVINE:

11 Q. Mr. Sussex, the Port of Wilmington is within
12 driving distance of New York City?

13 A. Yes, it is.

14 Q. The port of Wilmington is within driving
15 distance of Washington, DC?

16 A. Yes, it is.

17 Q. Now, one of the allegations in this case is
18 that Stevedore Services has material ties to terrorism.
19 Have you heard that?

20 A. Yes, and I don't believe that.

21 Q. As a stockholder, if it were true that
22 Stevedore Services had material ties to terrorism,
23 would it be in your best interest for Delaware Marine

1 to be run by terrorists?

2 A. No, it wouldn't, but as I know, they don't
3 have that problem.

4 Q. As a stockholder, would it be in your best
5 interest for Delaware Marine -- would it change your
6 mind on whether or not to accept the offer if Stevedore
7 Services had ties to terrorism?

8 A. Yes, but I know they don't have that problem.
9 That is why I need this deal to go through.

10 Q. Mr. Sussex, are you an expert in national
11 security?

12 A. No, but I know what terrorism is.

13 Q. Are you an expert in terrorism?

14 A. No, but I would be watching the news.

15 Q. Are you an expert in Stevedore Services?

16 A. No, I'm not, but I know they don't have
17 material ties to terrorism?

18 Q. Then you can't say that you know definitively
19 whether or not Stevedore Services has ties to
20 terrorism, can you?

21 A. Yes, I can, because to my knowledge they don't
22 have terrorism problems.

23 MS. LEVINE: Nothing further.

1 THE COURT: Any redirect?

2 REDIRECT EXAMINATION

3 BY MS. HARRIS:

4 Q. To your knowledge, does the company MESS have
5 any ties to terrorists?

6 A. No, and if that was the issue, I wouldn't --

7 MS. LEVINE: Objection, Your Honor, lack of
8 personal knowledge. Move to strike that question as
9 leading, as well.

10 MS. HARRIS: Your Honor, pursuant to Rule
11 701(a) this is the witness's rationally based
12 perception and opposing counsel went into this on
13 cross-examination.

14 THE COURT: The record reflects the question
15 was does he know or have any information that suggests
16 they are related to terrorism?

17 MS. HARRIS: Within his own personal
18 knowledge.

19 THE COURT: His answer is no.

20 MS. HARRIS: Yes, Your Honor.

21 THE COURT: The objection is overruled.

22 BY MS. HARRIS:

23 Q. To your own personal knowledge, does the

1 company MESS have any ties to terrorists?

2 A. No, they do not.

3 MS. HARRIS: No further questions, Your Honor.

4 MS. PARKHOUSE: At this time plaintiff rests.

5 THE COURT: You may step down. Defense ready
6 to proceed?

7 MS. LEVINE: Your Honor, Delaware Marine calls
8 Pat Kent. Mr. Kent.

9 (The witness was previously sworn.)

10 DIRECT EXAMINATION

11 BY MS. LEVINE:

12 Q. Good evening, Mr. Kent.

13 A. Good evening.

14 Q. Could you please state your full name and
15 spell your last?

16 A. Yes, my name is Pat Kent, K-E-N-T.

17 Q. What is your profession?

18 A. Well, I am the CEO and President at Delaware
19 Marine.

20 Q. Did you start Delaware Marine?

21 A. Yes, I did, back in 1965 when I hardly had two
22 nickles to rub together.

23 Q. What do you do as CEO?

1 A. Just about everything. I oversee the
2 day-to-day operations down at the marine cargo
3 terminal. I like to keep the ship running straight, as
4 they say.

5 Q. Where is your company located?

6 A. Right here in Wilmington, Delaware.

7 Q. Why did you choose Wilmington?

8 A. There is lot of reasons. Wilmington has such
9 a strong history in shipping. It's got a strong work
10 force, too. Moment I layed eyes on it, I knew this was
11 the right city.

12 Q. Has Delaware Marine been successful?

13 A. Very successful.

14 Q. How do you define success?

15 A. It is more than just the stock price, it's
16 having satisfied customers, and energized work force,
17 having the ability to look into the long-term benefit
18 for our stockholders.

19 Q. Mr. Rodney testified that the peak high of
20 Delaware Marine has been \$22 per share; is that true?

21 A. I wouldn't call it our peak at all. We have
22 got a bright future ahead of us.

23 Q. Mr. Kent, I would like to direct your

1 attention to the testimony that was given that Delaware
2 Marine stock price dropped after 9/11. Did your
3 company have a plan to bring the stock price back up to
4 where it was?

5 A. Absolutely. As the board of directors of
6 Delaware Marine, we have a winning strategy to take
7 that company from good to great.

8 Q. Could you explain that strategy for the jury?

9 A. Definitely. There two parts to the plan, the
10 first part is to dredge the Delaware River and the
11 second part is to upgrade the Port.

12 Q. Why is dredging the Delaware River part of
13 your strategy?

14 A. You have to understand that when you dredge
15 the Delaware River you will be able to get larger ships
16 in, super class cargo ships, and with those super class
17 cargo ships we will have more cargo. More cargo means
18 more business, more business means more profits, and
19 more profit means a higher stock price.

20 Q. Why is upgrading the Port of Wilmington in
21 your strategy?

22 A. Well, we will be handling more cargo and after
23 we upgrade the Port we will be able to do it more

1 efficiently.

2 Q. I would like to move on from your strategy to
3 increase the stock price in your company to another
4 important issue in this case, whether or not Delaware
5 Marine's Board made an informed by decision and
6 exercised good faith when it rejected Mess's offer.
7 Now, during opening statements opposing counsel stated
8 that you said you would never sell DAM no matter the
9 price; is that true?

10 A. No. I have never said that.

11 Q. Mr. Kent, why did the board choose to reject
12 MESS's offer?

13 A. In our best business judgement the board came
14 to believe that it was not in the best interest of our
15 stockholders.

16 Q. Why was it not in the best interest of your
17 stockholders?

18 A. Well, there were two major reasons. The first
19 one is that is not a fair price to the stockholders.

20 Q. How is MESS's offer not a fair price?

21 A. Well, all you have to do is be like
22 Mr. Rodney, look at the numbers. The stock price has
23 been trading at a higher price before, and the board

1 firmly believes it will be trading at a higher price
2 again.

3 Q. What is the second reason you chose to reject
4 the offer?

5 A. Well, the current leadership at Delaware
6 Marine has the institutional knowledge and experience
7 that MESS cannot buy.

8 Q. Why is that significant?

9 A. With that institutional knowledge and that
10 experience, we will be able to bring this company back
11 up to where it was and then some.

12 Q. We heard from Mr. Sussex today, a stockholder
13 in Delaware Marine, did you consider the stockholders
14 when you chose to reject the offer?

15 A. Absolutely. I love Erin, he is not kidding
16 about the Good Vibrations. This man's got the moves.
17 But you have to understand that our duty to the
18 stockholders goes beyond what they want right now.

19 Q. Well, did you -- Mr. Kent I would like to
20 direct your attention to the fact there might be any
21 other reasons that the board rejected MESS's offer; are
22 there any other reasons?

23 A. Yes, there are.

1 Q. What are the other reasons?

2 A. The board of directors at Delaware Marine came
3 to believe that MESS has direct ties to terrorism.

4 MS. PARKHOUSE: Objection, Your Honor,
5 pursuant to Rule 701 this is the witness's opinion.

6 MS. LEVINE: Response?

7 THE COURT: Yes.

8 MS. LEVINE: Your Honor, as a lay witness and
9 head of the board of directors and CEO and president of
10 Delaware Marine, this witness certainly has the
11 personal knowledge to testify about this. Seeing it is
12 rationally based on his perception to assist the tryer
13 of fact why the board rejected MESS's offer.

14 MS. PARKHOUSE: Your Honor, if I may respond.
15 Pursuant to Rule 4.18.2, no foundation has been laid as
16 to any knowledge that this witness does or does not
17 have about the corporation MESS; and, therefore, any
18 speculation about their ties to terrorism would be just
19 that, would be outside the scope of his personal
20 knowledge pursuant to Rule 602.

21 THE COURT: Counsel it is very difficult for
22 me to understand how a witness's opinion as a lay
23 witness can be rationally base if I don't know the

1 basis for that opinion. So the objection is sustained.

2 MS. LEVINE: Would you like me to lay the
3 foundation, Your Honor?

4 THE COURT: If you can, I will give you that
5 opportunity.

6 BY MS. LEVINE:

7 Q. Mr. Kent, why did the board believe that MESS
8 had ties to terrorism?

9 A. Well, after we received their offer, our
10 attorneys hired a man, an expert in terrorism to
11 investigate the company during our due diligence
12 process. We learned from him -- he is actually here
13 today so you will be able to hear from him -- we
14 learned about ties from terrorism.

15 Q. Did you make it known that you oppose MESS's
16 offer?

17 A. Yes, we did.

18 Q. How?

19 A. As president of Delaware Marine I spoke
20 publically about it.

21 Q. Did the board of directors do -- to your
22 knowledge, did MESS know that the board of directors
23 believed that MESS was tied to terrorism?

1 MS. PARKHOUSE: Objection, Your Honor,
2 pursuant to Rule 602, this asks for the witness to
3 speculate outside his scope of his knowledge.

4 MS. LEVINE: Response?

5 THE COURT: Yes.

6 MS. LEVINE: Your Honor, pursuant to Rule 602,
7 I am not asking this witness to speculate. I am asking
8 him to testify about his own personal belief, which is
9 not speculation.

10 MS. PARKHOUSE: Your Honor, if I may respond?

11 THE COURT: Yes.

12 MS. PARKHOUSE: Well, if she is asking for his
13 belief and it is opinion, pursuant to Rule 701, it is
14 still inadmissible.

15 THE COURT: Let me make sure I understand the
16 question. Can you repeat the question?

17 BY MS. LEVINE:

18 Q. To your knowledge, did MESS believe -- excuse
19 me, Your Honor, to your knowledge, did MESS know that
20 the board believed that MESS was tied to terrorism?

21 THE COURT: Can you direct the witness to a
22 particular point in time?

23 MS. LEVINE: Yes, Your Honor.

1 THE COURT: The reason I ask is that is stated
2 in the pleadings, isn't it?

3 MS. LEVINE: Yes, Your Honor.

4 THE COURT: At what point in time are you
5 asking the witness did his opinion about when the
6 opponent knew.

7 MS. LEVINE: When DAM's board of directors
8 rejected the offer.

9 THE COURT: Is it not true, counsel, that is
10 part of the pleadings?

11 MS. PARKHOUSE: Yes, Your Honor.

12 THE COURT: So we know that at least at some
13 point there is reason to believe that they believed the
14 board made its decision based upon terrorism ties.

15 MS. PARKHOUSE: Yes, Your Honor.

16 THE COURT: Okay. The objection is overruled.

17 BY MS. LEVINE:

18 Q. Mr. Kent, to your knowledge, did MESS know
19 that the board believed that MESS was tied to
20 terrorism?

21 A. Yes, I believe they did.

22 Q. Why do you say that they knew?

23 A. It was in the complaint that I got in the mail

1 that they knew we didn't vote the anti-terrorism
2 statute.

3 Q. When did they file the complaint?

4 A. September 1, 2007 simultaneously with when it
5 raised its offer to \$20.

6 Q. Did it concern the board that MESS files its
7 offer -- files their complaint and raised their offer
8 simultaneously?

9 A. Absolutely.

10 Q. Why?

11 A. It led the board of directors at Delaware
12 Marine to believe that the offer was not made in good
13 faith.

14 Q. Why did the board of directors believe that
15 MESS's offer was not made in good faith?

16 A. MESS must have known we couldn't accept any
17 offer they made whether it was \$20 per stock or
18 \$1 million.

19 Q. Why would you not accept their offer even if
20 it was \$1 million per stock?

21 A. Because in the United States of America we
22 don't do business with terrorists.

23 MS. LEVINE: Thank you. Nothing further.

CROSS EXAMINATION

BY MS. PARKHOUSE:

Q. Mr. Kent, DAM is headed by a board of directors, correct?

A. Correct.

Q. That board of director has five members, correct?

A. Yes.

Q. You are the chair of that board, correct?

A. I am. I was elected chairman.

Q. Three member are your family members, correct?

A. Yes.

Q. And one is your personal employee, your accountant Lois Lane?

A. Correct. She is a smart cookie.

Q. In fact three of your board of directors have no affiliation with the company other than serving as a board members, correct?

A. You could say that, yes.

Q. That is how you stated in your sworn affidavit, correct, Mr. Kent?

A. Yes, that's correct.

Q. In fact, it would be the decision of the board

1 of directors to redeem the poison pill and allow the
2 offer by MESS to go through, correct?

3 A. Absolutely, the board goes over any huge
4 corporation decision.

5 Q. Mr. Kent, you did, in fact, create a business
6 plan which you hoped would stimulates DAM's business,
7 correct?

8 A. That is correct.

9 Q. However, you did not hire a certified public
10 accountant to make a valuation analysis of this
11 business plan, did you?

12 A. No, we didn't feel that was necessary.

13 Q. You have not brought forth any expert in
14 accounting or finance in order to testify about the
15 likelihood of your business's success, correct?

16 A. That is correct. If you want to ask some
17 questions about, I am right here, though.

18 Q. But, in fact, you brought forth no
19 documentation or witnesses apart from your own
20 testimony which would corroborate that this business
21 plan has any potential for success, correct?

22 A. Well, I suppose Jamie could tell you about it
23 but I am not really sure.

1 Q. In fact, the only expert whom you brought
2 forth in today's case was Chris Read, correct?

3 A. No.

4 Q. You have brought forth Chris Read to
5 investigate terrorism, correct?

6 A. Yes.

7 Q. And as you stated on direct, you hired Mr.
8 Read after you received the offer from MESS, correct?

9 A. You know, that was part of my lawyer's deal.
10 I think they get him.

11 Q. And prior to that you had no personal
12 knowledge about the nation of Aladdin, correct?

13 A. No, I had heard about it, but I didn't really
14 know that much about it.

15 Q. You did feel it was necessary to hire a
16 terrorism consultant to corroborate your suspicions
17 that they had international ties to terrorism, correct?

18 A. Absolutely, ma'am.

19 Q. Which you had these suspicions prior to hiring
20 Chris Read, correct, Mr. Kent?

21 A. Ma'am, it is part of due diligence process
22 that you investigate any company trying to buy you out.

23 Q. You acknowledge that your stock market price

1 is low; isn't that true, Mr. Kent?

2 A. Ma'am, I do feel it under values that great
3 American company that Delaware Marine is.

4 Q. As of January of 2007, your entire board
5 believed that the stock market price would be
6 attractive to potential acquirers such as MESS; isn't
7 that true?

8 A. That is correct. And that proves true.

9 Q. Which is why you enacted the shareholders
10 rights plan, correct?

11 A. Correct, the board voted on it.

12 Q. And why you created your business plan; isn't
13 that true?

14 A. Not necessarily.

15 Q. Now, however, you did create your business
16 plan in order to try to stimulate your business and,
17 therefore, to increase your stock market price,
18 correct, Mr. Kent?

19 A. Correct.

20 Q. Now, the first step which you intend to take
21 in this business plan is to support the dredging of the
22 shipping lanes in the Delaware River; isn't that true?

23 A. Yes.

1 Q. In order to do this you must first secure the
2 participation of the Army Corps of Engineers, right?

3 A. That's right. I will have to give them a
4 call.

5 Q. And as to date, you have not spoken with
6 anyone from the Army Corps of Engineers, correct?

7 A. No, that's correct. I haven't gotten around
8 to that quite yet.

9 Q. And it is, in fact, May of 2008, correct, Mr.
10 Kent?

11 A. I believe so.

12 Q. You enacted this plan almost a year and a half
13 ago, correct?

14 A. That's correct.

15 Q. Yet you are telling this jury that you have
16 the not even begun to take the first step which you
17 intend to take to increase the business of DAM?

18 A. I am sorry, ma'am, I don't think you
19 understand my plan. I want to have the funding first.
20 So I have been working on securing that.

21 Q. However you do first state in your business
22 plan securing the participation of the Army Corps of
23 Engineers as you state in your sworn affidavit,

1 correct, Mr. Kent?

2 A. Yes, that's right. I just feel like we should
3 have the funding before that.

4 Q. And as of right now there is absolutely no
5 contacts between anyone from the Army Corps of
6 Engineers and anyone from DAM, correct?

7 A. No, I have not contacted them yet.

8 Q. Now, the second step which you intend to take
9 is to retrofit the facility at the Port of Wilmington
10 to accommodates larger ships, right?

11 A. Absolutely.

12 Q. And in order to do this, you must first secure
13 100 million dollars of funding which DAM does not
14 currently have, right?

15 A. That's correct.

16 Q. Now you've already sent out various feelers to
17 see if you can receive this funding, correct?

18 A. That I have.

19 Q. However you have only received one response to
20 date; isn't that true?

21 A. Well, I have been talking in particular to one
22 of my good banker buddies.

23 Q. In fact this is a personal friend of yours,

1 right?

2 A. Yeah, I know Paul. We go way back.

3 Q. Who owns a local bank, right?

4 A. Well, it's pretty local. It's over in Philly.

5 Q. However, in fact, Paul cannot at this point
6 support this retrofitting, correct?

7 A. Not at the time.

8 Q. Because his bank is having to deal with some
9 bad loan write offs and they have get those back before
10 they can even consider supporting this project, right?

11 A. That's correct. I think he is pretty tied up
12 right now.

13 Q. However, once you get -- this local bank gets
14 those bad loan write offs back, they will be able to
15 give you the \$100 million you need, right, Mr. Kent?

16 A. I firmly believe that.

17 Q. Now, the second -- sorry the third step which
18 you intend to take is to hire additional employees,
19 correct?

20 A. That's correct. We are going to expand our
21 familiar.

22 Q. Which requires more funding, right?

23 A. Yes, it will. If we have more employees, we

1 will need to pay them.

2 Q. Those are the only three steps which you
3 include in your business plan, correct?

4 A. No.

5 Q. You solely -- you include retrofitting?

6 A. Yes.

7 Q. Supporting the dredging of the Delaware
8 shipping lanes?

9 A. Correct.

10 Q. Hiring new employees, correct?

11 A. Yes, but each section has quite a few
12 subsections. I wouldn't really categorize it as only
13 having those three sections.

14 Q. However, at this point, Mr. Kent, you cannot
15 go ahead with a single step of your business plan
16 despite the fact you have enacted it for over a year,
17 correct?

18 A. Well, it is not correct. I could go out in
19 the hall and call the Army Corps of Engineers if you
20 would like me.

21 Q. However luckily you have ten years to make
22 that phone call to the Army Corps of Engineers; isn't
23 that true?

1 A. I intend to get it done pretty soon.

2 Q. Now, you don't include anywhere in your
3 business plan, plans to increase the security of your
4 Port, do you?

5 A. Not at this time. I feel we are constantly
6 improving security. You can ask Jamie about that.

7 Q. And, in fact, you don't include anywhere in
8 your business plan, plans to bring in new commodities
9 in order to stimulate DAM's business, correct?

10 A. New commodities?

11 Q. Yes, you don't include anywhere in your
12 business plan trying to bring in shipments of Texas
13 Hold-em playing cards because you believe that it will
14 help to bring in more revenue, correct?

15 A. We've already gotten the Texas Hold-em cards
16 coming in at the time.

17 Q. You didn't include that anywhere in your sworn
18 affidavit or your business plan, did you, Mr. Kent?

19 A. No, I did not think that was necessary. We
20 already heard it.

21 Q. Now, let's talk about what you are aware of in
22 today's case. You are aware that shareholders owning
23 more than 51 percent of the shares of DAM have already

1 tendered their shares, correct?

2 A. Yes. That's been brought to my attention.

3 Q. In fact, you answered it in your answer to the
4 complaint by MESS, correct?

5 A. That's correct.

6 Q. In fact, you own 40 percent of the remaining
7 49 shares which have not been tendered to this date,
8 correct?

9 A. I'm not too good at math either, but I think
10 that sounds about right.

11 Q. You do state in your sworn affidavit owning 40
12 percent of the shares in DAM, correct?

13 A. Correct.

14 Q. And 100 minus 51 is 49 percent which remain
15 untendered, correct?

16 A. Yes.

17 Q. In fact, you have also been approached by
18 shareholders such as Erin Sussex who begged you to
19 redeem the poison pill and allow the offer by MESS to
20 go through, correct?

21 A. Erin has e-mailed me about it, but I haven't
22 gotten around to actually, personally speaking to him
23 about it.

1 Q. Despite the fact he is begging you to look out
2 for his best interests by redeeming the poison pill,
3 correct?

4 A. Ma'am, you have to understand that looking out
5 for a stockholder's best interest doesn't necessarily
6 constitute looking at the immediate payout.

7 Q. Now, as you have already stated, you hired Mr.
8 Read in order to corroborate your suspicions that there
9 are international ties to terrorism with the nation of
10 Aladdin, correct?

11 A. We asked him to investigate and that is what
12 he returned with.

13 Q. However, you are making this decision to
14 refuse the poison pill based on matters of national
15 security, correct?

16 A. That is correct.

17 Q. Mr. Kent, you have never become aware of a
18 terrorist attacked which would be linked to Devereaux
19 Terry, have you?

20 A. Not particularly.

21 Q. In fact, you are not personally familiar with
22 Devereaux Terry at all, are you?

23 A. No, I am not.

1 Q. You have refused to speak with any person on
2 behalf of MESS, correct?

3 A. That is correct. I didn't feel it necessary
4 to speak to the terrorist organization.

5 Q. However, you also had no information in which
6 a terrorist attack could ever be linked to MESS,
7 correct?

8 A. That's correct.

9 Q. And you also have no information of any
10 terrorist attack which would be linked to the nation of
11 Aladdin, correct, Mr. Kent?

12 A. Not to my knowledge.

13 MS. PARKHOUSE: Thank you, Your Honor. I have
14 no further questions.

15 THE COURT: Any redirect?

16 MS. LEVINE: No need, Your Honor.

17 THE COURT: You my step down. Next witness.

18 MS. TEUTSCH: Your Honor, at this time
19 Delaware Marine calls James Newcastle.

20 (The witness was previously sworn.)

21 DIRECT EXAMINATION

22 BY MS. TEUTSCH:

23 Q. Good evening, Mr. Newcastle.

1 A. Good evening.

2 Q. Please State your full name and spell your
3 last name for the record?

4 A. I am James Newcastle, N-E-W-C-A-S-T-L-E.

5 Q. Where do you live?

6 A. Right here in Wilmington.

7 Q. Where do you work?

8 A. I work at Delaware Marine.

9 Q. What do you do at Delaware Marine?

10 A. I am the head of security and I have been
11 working in that position since 2004 when I was
12 appointed.

13 Q. What qualifications did you have in order to
14 receive that appointment?

15 A. I attend Rodney College and earned my degree
16 in criminal justice. I also have years of experience
17 working with both marine cargo and port security.

18 Q. What do you do as head of security?

19 A. Well, as we all know security is very
20 important, especially at a port of entry and I am
21 responsible for establishing the security measures at
22 Delaware Marine, to protect people, cargo and ships
23 that pass through our port. I also supervise the

1 entire security force.

2 Q. Why is it important that measures are in place
3 to protect the Port of Wilmington?

4 A. We are a busy international port. If our port
5 is not secure, our business cannot function and the
6 country is not safe.

7 Q. You testified that you are responsible for
8 creating measures that protect the people that enter
9 the Port of Wilmington. How many people pass through
10 the Port of Wilmington?

11 A. Well, hundreds of thousands of people pass
12 through our Port on cruise liners a ferry ships.

13 Q. Why is it important that cargo that enters the
14 Port of Wilmington be secure?

15 A. Well, obviously, people entrust us with the
16 protection of their property. We take that very
17 seriously at Delaware Marine. We also need to make
18 sure nothing dangerous or illegal gets into our
19 country.

20 Q. How much cargo passes through the Port of
21 Wilmington every year?

22 A. We have more than 400 ships carrying more than
23 four million tons of cargo pass through our port in any

1 given year.

2 Q. Why is it important that the vessels that
3 enter the Port of Wilmington be protected from harm?

4 A. These ships themselves they are tremendously
5 expensive and we also need to make sure some of these
6 ships are protected because they have invaluable
7 historic significance to us here in Wilmington.

8 Q. What ships pass through the Port of Wilmington
9 that are of invaluable historic significance?

10 A. We host ships from the Cape May/Lewes Ferry
11 fleet. We host tall ship regattas. We are extremely
12 proud to say we have been the home Delaware's tall ship
13 the Kalmar Nyckel. We even brought Naval vessels, both
14 foreign and domestic.

15 Q. What are the potential ramifications of a
16 breach of security at the Port of Wilmington?

17 A. They are disastrous. Our Port is within
18 driving distance of New York, Philadelphia, Washington,
19 DC. A breach of security here would have unimaginable
20 repercussions there.

21 Q. Mr. Newcastle, I would like to take the
22 opportunity to allow you to address some of the things
23 Mr. Sussex said. He talked about an instance in which

1 had you to call in bio terrorism experts. Could you
2 please explain to the jury what happened?

3 A. Yes, we received a bad batch of bananas from a
4 foreign country, and fire ants are an invasive species.
5 We took every precaution necessary to make sure no harm
6 came of them.

7 Q. Were the bio terrorism experts because there
8 was a significant problem, or were they simply a
9 precaution?

10 A. Well, they were a precaution to make sure they
11 don't get into the environment in Wilmington.

12 Q. Now, opposing counsel insinuated that you have
13 stolen a TV from Delaware Marine. How do you respond
14 to that?

15 A. Ma'am, that is simply not true. I have never
16 been involved in any theft from our Port and neither
17 have any of our employees.

18 Q. To your knowledge, does MESS operate a marine
19 cargo term in the Port of Wilmington?

20 A. No, ma'am, they don't.

21 Q. To your knowledge, has MESS ever operated a
22 marine cargo terminal in the Port of Wilmington?

23 A. No, they haven't.

1 Q. To your knowledge, has MESS ever operated a
2 marine cargo terminal in the United States?

3 A. No, ma'am they haven't.

4 Q. Do you know how long Delaware Marine has
5 operated in the Port of Wilmington?

6 A. Yes, I do.

7 Q. How long?

8 A. 43 years now.

9 Q. Based on this knowledge, does MESS have as
10 much experience with operating a marine cargo terminal
11 in the Port of Wilmington as Delaware Marine has?

12 MS. HARGIS: Objection, Your Honor, pursuant
13 to Rule 701 this would cause this witness to make an
14 opinion on this statement.

15 MS. TEUTSCH: Response, Your Honor?

16 THE COURT: Yes.

17 MS. TEUTSCH: This witness has testified that
18 he is aware of the fact that MESS has -- does not now
19 nor has it ever operated a marine cargo terminal in the
20 Port of Wilmington let alone the United States and that
21 Delaware Marine has been operating at the Port of
22 Wilmington for the past 43 years. In this instance it
23 is proper for this witness to draw the opinion that

1 because Delaware Marine has been operating for so long
2 in the Port of Wilmington, it does have more experience
3 with port operations then MESS does.

4 THE COURT: Objection is overruled.

5 MS. HARGIS: Yes, Your Honor.

6 BY MS. TEUTSCH:

7 Q. Based on your knowledge of the facts about
8 which you just testified, does MESS have as much
9 experience with operating a marine cargo terminal in
10 the Port of Wilmington as Delaware Marine?

11 A. No, ma'am. MESS has no experience. We have
12 43 years of it.

13 Q. To your knowledge as head of security at
14 Delaware Marine, has there than ever been a serious
15 breach of security?

16 A. No, ma'am, there hasn't. Not a lot of ports
17 can claim that.

18 MS. TEUTSCH: Thank you, Mr. Newcastle. I
19 have nothing further.

20 THE COURT: Cross.

21 CROSS EXAMINATION

22 BY MS. HARGIS:

23 Q. Mr. Newcastle, you are head of security at

1 Delaware Auto Marine Corporation, correct?

2 A. Yes, I am.

3 Q. And prior to being appointed as this head of
4 security, you were a forklift operator, is that not
5 true?

6 A. Yes. When I first started working, I worked
7 at various positions in between them.

8 Q. Now, you state that you don't know about
9 foreign countries or foreign policy, correct?

10 A. I don't know much about them.

11 Q. But you do know about the Port of Wilmington;
12 isn't that true?

13 A. Yes, I do.

14 Q. And it's true that the Coast Guard is the
15 first line of defense in the Port of Wilmington,
16 correct?

17 A. Yes, they do random sweeps of ships entering
18 the mouth of the Delaware Bay.

19 Q. The Coast guard only inspects one of out every
20 20 vessels that passes through Delaware Bay, correct?

21 A. Yes, they are not very efficient.

22 Q. Now, you state that your company, security is
23 a top priority; isn't that correct?

1 A. It is and has to be.

2 Q. However, you only check randomly the vessels
3 that is come into your Port, as well; isn't that true?

4 MS. TEUTSCH: On objection, Your Honor. May I
5 assume we have approached the bench for a hypothetical
6 sidebar to argue this objection?

7 THE COURT: Okay.

8 MS. TEUTSCH: Your Honor, I simply wish to
9 argue this objection out of the hearing of the jury.
10 However, it is my understanding that the jury must
11 hear.

12 THE COURT: Yes. Under the rules, as I
13 understand them, you are correct.

14 MS. TEUTSCH: Your Honor I object under Rule
15 401 relevance. There is no relevance to the security
16 measures currently in place at Delaware Marine. It
17 makes no consequential fact in this case more or less
18 probable and it go to no issue. That is, that a
19 combination between MESS and Delaware Marine would pose
20 a threat to national security. That MESS has ties to
21 international terrorism, or the breach of fiduciary
22 duty. The security measures currently in place at
23 Delaware Marine go to none of these. For this witness

1 to testify about them would be irrelevant and more
2 prejudicial than probative.

3 MS. HARGIS: If I may respond, Your Honor.

4 THE COURT: Yes.

5 MS. HARGIS: Pursuant to Rule 401, this
6 testimony is highly relevant and it goes directly to
7 this witness's credibility and lack of qualifications
8 as head of security, and the lack of qualifications of
9 the security systems at Delaware Auto and Marine.

10 THE COURT: It seems to me that you introduced
11 the subject of his knowledge about security at the Port
12 and the jury can draw whatever fair inferences they
13 wish about his credibility in that regard. Objection
14 is overruled.

15 BY MS. HARGIS:

16 Q. Yes, Your Honor.

17 Now, you only conduct random checks of the
18 cargo that comes into your Port, correct?

19 A. Yes, we do. We check 40 percent of all ships
20 passing through our port.

21 Q. You only checked two to three vessels per
22 week, correct?

23 A. That's an average.

1 Q. And on these vessels you only check four or
2 five containers; isn't that true?

3 A. On average that's true.

4 Q. Now, you adamantly discount MESS's plan to
5 install an X-ray scanning system, correct?

6 A. Excuse me, what?

7 Q. You adamantly discount MESS's plan to install
8 an X-ray scanning system, if they acquire DAM, correct?

9 A. Yes, these scanning devices haven't passed
10 inspection by the Department of Homeland Security.
11 They are very -- they are untested and they are
12 unapproved.

13 Q. You say this would not prevent hazardous
14 material from being offloaded into the Port, correct?

15 A. No, ma'am. I don't believe they would.

16 Q. However, you have never spoken to anyone
17 involved in security at MESS; isn't that true?

18 A. Not with MESS, no.

19 Q. You have never spoken to anyone at MESS at
20 all, have you?

21 A. No, I haven't.

22 Q. So you have no evidence to base this claim;
23 isn't that correct?

1 A. I am very familiar with these Gamma Ray
2 scanners.

3 Q. Now, you state that the security card system
4 in your port is effective; isn't that correct?

5 A. Yes, it prevents unauthorized access to the
6 premises and warehouses.

7 Q. However, you state that your employees often
8 ignore this measure; isn't that true?

9 A. There was a point in time where employees lent
10 cards between other employees.

11 Q. Now, Russian made pistols and even dynamite
12 have been found in your warehouse, correct?

13 A. Yes, those are two examples of our security
14 finding a threat and neutralizing it.

15 Q. These Russian made pistols are not found
16 because of any security procedure at your company,
17 correct?

18 A. Well, no, we found them while offloading from
19 a ship.

20 Q. You found them because you dropped a crate and
21 you happened to find some Russian made pistols,
22 correct?

23 A. Yes, those were the circumstances.

1 Q. You haven't decided to suggest to Pat Kent to
2 invest in an x-ray scanning device to prevent such a
3 security breach, correct?

4 A. No, ma'am. We choose to use reliable methods
5 that have been tried and true.

6 Q. Like your guard dogs and quick security
7 checks, correct?

8 A. Yes, ma'am. They are very efficient.

9 Q. Your Honor let the record reflect I am
10 approaching opposing counsel with what has been
11 previously marked as Exhibit 5. May I approach witness
12 for identification purposes?

13 THE COURT: Yes.

14 BY MS. HARGIS:

15 Q. Mr. Newcastle, Exhibit 5 is an evaluation that
16 you requested and received from Secret Security
17 Consultants, LLC, correct?

18 A. Yes two years ago we asked them to evaluate
19 and recommend improvements to our security.

20 Q. And you requested this as you were in the
21 capacity as head of security, correct?

22 A. Yes.

23 Q. Your Honor, at this time the plaintiff enters

1 into evidence -- asks that you enter into evidence
2 Exhibit 5. Its authenticity has been stipulated and
3 pursuant to Rule 803.6 it is a document made in the
4 regular course of business?

5 MS. TEUTSCH: Your Honor, I object to hearsay
6 on the grounds that this Exhibit does not meet the
7 requirements provided under Rule 803(6). This is
8 not -- there is no foundation that has been laid that
9 it was made at or near the time by a person with
10 knowledge and there is no foundation laid that is, in
11 fact, made in the course of regularly conducted
12 business activity. The foundation has not been laid
13 that these things are true; and, therefore, the Exhibit
14 does not meet the requirements under 803(6), exception
15 to hearsay.

16 THE COURT: Response.

17 MS. HARGIS: Your Honor, under the Rule --
18 under Rule 803.6 it also suggests that to admit a
19 business record the person being questioned must be a
20 qualified witness of the document, and as Mr. Newcastle
21 requested and received this document for the purpose of
22 evaluating his own company, we contend that he is a
23 qualified witness of the document.

1 THE COURT: The objection is overruled. It
2 will be admitted.

3 MS. HARGIS: Yes, Your Honor.

4 BY MS. HARGIS:

5 Q. Direct Your Honor's attention to part of this
6 document. In this document it states "Set forth below
7 in Section I are specific criteria that we believe are
8 essential to the provision of minimum security of all
9 international ports of call." Correct?

10 A. Yes, that is what it says.

11 Q. Now, in Section IA(4) it states that you lack
12 an auditing system in place to identify security
13 breaches in your company, correct?

14 A. Well, yes, the auditing system would help
15 investigate potential breaches that came from
16 employees. We never had a problem with our employees.

17 Q. Because you do not have this auditing system,
18 you cannot tell this jury that you have properly
19 identified all security breaches in your Port, correct?

20 A. Ma'am, that would help us identify the source
21 of a security breach, not the security breach itself.

22 Q. You cannot tell this jury that you have been
23 able to identify a source of a security breach,

1 correct?

2 A. Nom, ma'am, it is very rare that we are able
3 to identify a specific source of a security breach.

4 Q. Now, in Section II it gives you
5 recommendations for your company, correct?

6 A. Yes, it does.

7 Q. And it States, "In order make DAM first rate
8 in terms of security and anti-terrorism measures..."
9 and then it gives you recommendations in order to
10 improve your company, correct?

11 A. Yes, it does.

12 Q. In Section I it states "that a proper use of
13 your employee identification card system is mandatory,"
14 correct?

15 A. Yes, and we have taken great steps to achieve
16 that.

17 Q. Mr. Newcastle, you have yet to enforce this
18 policy; isn't that true?

19 A. No, it is not. We have enforced this policy
20 very strictly.

21 Q. You state in your sworn affidavit that people
22 ignore your security measures, specifically the
23 security card system, correct?

1 A. Yes, ma'am. There was a point in time when
2 these security measures were overlooked. We have come
3 down and the practice rarely happens.

4 Q. Now, in Section III it gives company rankings
5 based on technology employed and fewest number of
6 security breaches, correct?

7 A. Yes, it ranks us among companies from all over
8 the world.

9 Q. And Mr. Newcastle, your company, Delaware Auto
10 and Marine Corporation is ranked 5th, correct?

11 A. Fifth in the world, yes.

12 Q. However Mideast Stevedore Services,
13 Incorporated ranks second; isn't that true?

14 A. That's what it says. Yes.

15 Q. Now, you would agree with me that you believe
16 that if MESS is to acquire control of DAM, you think
17 you will be out of a job?

18 A. Yes, it is possible. I have heard that they
19 plan on firing our entire security force.

20 MS. HARGIS: Thank you, Your Honor. No
21 further questions for this witness.

22 THE COURT: Redirect.

23 MS. TEUTSCH: Briefly, Your Honor.

REDIRECT EXAMINATION

BY MS. TEUTSCH:

Q. Mr. Newcastle, do you still have Exhibit 5.

A. No, ma'am. She took it.

Q. Permission to approach this witness with
admitted Exhibit 5?

THE COURT: Yes.

BY MS. TEUTSCH:

Q. Now, Mr. Newcastle, will you please turn to
Section II of this report and read the first sentence?

A. Section II is "overall, security measures at
DAM are rated good to very good."

Q. Now, will you please read the date on this
report?

A. It was made in July of 2006.

Q. Now, will you please turn to Section II and
read under Subpoint 1, the last sentence under Improper
Use of Employee Identification Cards?

A. "Employees engaging if this practice should be
disciplined."

Q. And since July of 2006, have you implemented
that procedure, have you begun disciplining employees
who engage in those practices?

1 A. Yes, ma'am, we have.

2 MS. TEUTSCH: Thank you. I have nothing
3 further.

4 RECROSS EXAMINATION

5 BY MS. HARGIS:

6 Q. Mr. Newcastle, this document, Exhibit 5, was
7 completed in July of 2006, correct.

8 A. Yes, it was.

9 Q. Nearly two years ago, isn't that true?

10 A. Yes, ma'am.

11 Q. And you have still yet to properly enforce
12 your employee identification card system, correct?

13 A. No, ma'am. We started enforcing it.

14 Q. Your sworn affidavit that you completed two
15 days ago you stated that you're still having
16 problems --

17 MS. TEUTSCH: Objection, Your Honor. This
18 question has been asked and answer in various forms.

19 THE COURT: Sustained.

20 MS. HARGIS: Yes, Your Honor.

21 BY MS. HARGIS:

22 Q. Mr. Newcastle, in this Exhibit 5 it gives
23 other recommendations under the recommendation portion,

1 correct.

2 A. Yes, there are two more.

3 Q. And you have not chosen to employ any of those
4 optional provisions, correct?

5 A. Yes, the second one is the auditing system and
6 we decided against that because we never had any prior
7 problems with security at -- security concerning our
8 employees, and the third recommendation is those x-ray
9 equipment scanners. And we decide that since these
10 scanners haven't been approved and tested --

11 Q. Mr. Newcastle, the answer to any my is yes,
12 correct?

13 A. Yes, ma'am. I was trying to be helpful.

14 MS. HARGIS: Thank you, Your Honor. No
15 further questions.

16 THE COURT: You may step down.

17 MR. THOLE: Delaware Marine calls Agent Chris
18 Read.

19

20 (The witness was previously sworn.)

21 DIRECT EXAMINATION

22 BY MR. THOLE:

23 Q. Permission to proceed?

1 THE COURT: Yes.

2 BY MR. THOLE:

3 Q. Good evening, Mr. Read.

4 A. Good evening.

5 Q. Please state your full name and then spell
6 your last name for the Court's records.

7 A. Chris Read, R-E-A-D.

8 Q. What is your profession?

9 A. I am the founder and head consultant of CH
10 Enterprises.

11 Q. What is the business of CH Enterprises?

12 A. We are a private consultation firm for
13 businesses. We specialize in national security.

14 Q. What are your areas of expertise?

15 A. Both terrorism and national security.

16 Q. Have you been asked to research and analyze
17 specific issues in this case?

18 A. Yes, I have.

19 Q. Have you reached conclusions based on your
20 research and analysis?

21 A. Yes, three actually.

22 Q. Before we get to your conclusions, it is
23 important for this jury to hear your qualifications for

1 making those conclusions. What education have you
2 received?

3 A. I have a BA in International Studies along
4 with minors in Arabic and German from the University of
5 Massachusetts.

6 Q. What experience do you have in your areas of
7 expertise; terrorism and national security?

8 A. For over 20 years, I have served as an
9 intelligence analyst and Agent for the EDA.

10 Q. What is the EDA?

11 A. That is the External Defense Agency. It's an
12 intelligence agency of United States Government.

13 Q. What, specifically, were your duties at the
14 EDA?

15 A. My mission always has been to protect the
16 United States.

17 Q. How do you do that?

18 A. I meet face-to-face with people involved in
19 terrorist activities, then I also collect and analyze
20 intelligence data.

21 Q. Agent Read, you testified that you reached
22 three conclusions in this case. Tell us your first
23 conclusion?

1 A. The government of Aladdin has direct material
2 ties to international terrorism.

3 Q. Your second conclusion?

4 A. That the company MESS has their own
5 independent direct material ties to international
6 terrorism.

7 Q. And your third conclusion?

8 A. If MESS were allowed to takeover Delaware
9 Marine, it will pose a threat to national security.

10 Q. Now, upon what factors did you rely in
11 reaching your first conclusion that Aladdin has direct
12 material ties to international terrorism?

13 A. Official government and commercial documents,
14 along with my own personal observations.

15 Q. Are these sources customarily relied upon by
16 experts such as yourself in terrorism and national
17 security?

18 A. Yes, they are.

19 Q. In your experience, are these sources
20 reliable?

21 A. Yes, very.

22 Q. What evidence did you find that Aladdin has
23 direct material ties to terrorism?

1 A. Aladdin's national airport grants special
2 privileges to associates of terrorist organizations.
3 The Bank of Aladdin --

4 MS. HARRIS: Objection, Your Honor, pursuant
5 to Rule 802 this would be hearsay.

6 MR. THOLE: May I respond, Your Honor?

7 THE COURT: Yes.

8 MR. THOLE: This expert witness is not
9 testifying to specific out-of-court statements, Your
10 Honor, it does not meet the definition of hearsay.
11 Pursuant to Rule 702, the foundation has been laid that
12 he is an expert, skill, knowledge, education,
13 experience and training in terrorism and national
14 security. Pursuant to Rule 703, this witness is
15 allowed to make conclusions without disclosure of the
16 underlying facts or data. In fact, the underlying
17 facts or data need not be admissible. These are
18 conclusions, not out-of-court statements that would be
19 under the hearsay Rule 801, Your Honor.

20 MS. HARRIS: Your Honor, if I may respond.
21 While an expert may render his opinion on inadmissible
22 evidence, this does not make the actual evidence
23 admissible in court today. This witness is testifying

1 to what he learned from these documents.

2 THE COURT: The objection is overruled.

3 MS. HARRIS: Yes, Your Honor.

4 BY MR. THOLE:

5 Q. Agent Read, tell us, again, what evidence did
6 you find that Aladdin has direct material ties to
7 terrorism?

8 A. Both, again, the airport of Aladdin grants
9 privileges to associates of terrorist organizations.
10 The Bank of Aladdin transfers and holds funds for
11 terrorist organizations that I personally observed the
12 prime minister of Aladdin meeting with an admitted
13 terrorist.

14 Q. How did you observe the prime minister of
15 Aladdin meeting with an admitted terrorist?

16 A. It was during a reconnaissance mission with
17 EDA.

18 Q. Where was the meeting between the prime
19 minister of Aladdin and admitted terrorist?

20 A. It was just off the Coast of Oman on a small
21 island of Aladdin at the prime minister's own private
22 retreat.

23 Q. What is the significance of a meeting between

1 the prime minister of Aladdin, a country that controls
2 MESS and an admitted terrorist?

3 A. Aladdin owns and controls MESS.

4 Q. And who was the admitted terrorist that the
5 prime minister of Aladdin met with?

6 A. Drew Terry, the brother of Devereaux Terry.

7 Q. You mean Devereaux Terry, the president of
8 MESS?

9 A. Yes, sir.

10 Q. Agent Read, I would like to move to your
11 second conclusion; that MESS has independent direct
12 material ties to terrorism. Would you please tell the
13 jury what you mean when you say independent?

14 A. Yes. Not only does MESS have ties to
15 terrorism through the government of Aladdin, who owns
16 and controls it, but they have their own independent
17 ties.

18 Q. What did you -- have you reviewed records and
19 made observations upon which you relied?

20 A. Yes, I have.

21 Q. What specifically?

22 A. Well, again, official commercial and
23 government documents, along with my own personal

1 observations.

2 Q. Are these sources customarily relied upon by
3 an expert in terrorism and national security?

4 A. Yes, they are.

5 Q. In your experience, are they reliable?

6 A. Very.

7 Q. What evidence did you find that MESS has
8 independent direct material ties to terrorism?

9 MS. HARRIS: Your Honor, pursuant to Rule 802,
10 this question calls for hearsay.

11 MR. THOLE: Response, Your Honor?

12 THE COURT: Yes.

13 MR. THOLE: Once again, if we --

14 THE COURT: The same response you gave before?

15 MR. THOLE: Yes, Your Honor.

16 THE COURT: The objection is overruled.

17 BY MR. THOLE:

18 Q. What evidence did you find that MESS has
19 independent direct material ties to terrorism?

20 A. The president of MESS is the brother of an
21 admitted international terrorist. Associates of MESS
22 are granted special privileges by the airport of
23 Aladdin. MESS has funded terrorist actions of Drew

1 Terry. And the president of MESS, Mr. Devereaux Terry,
2 personally endorses international terrorism.

3 Q. Agent Read, how did you learn that the
4 president of MESS, Devereaux Terry, personally endorses
5 international terrorism?

6 A. A wiretap recorded one of Mr. Terry's phone
7 conversations.

8 Q. Is there a record or transcript of that phone
9 conversation?

10 A. Yes, I believe so.

11 Q. Let the record reflect that I am showing
12 opposing counsel a copy of proposed Exhibit 4, the
13 phone transcript. Permission to approach opposing
14 counsel?

15 THE COURT: Yes.

16 MR. THOLE: Permission to approach the
17 witness?

18 THE COURT: Yes.

19 BY MR. THOLE:

20 Q. Agent Read, I am approaching you with what has
21 been marked as proposed Exhibit 4 for identification
22 purposes. Do you recognize this document?

23 A. Yes, I do.

1 Q. Could you tell us what it is?

2 A. Yes. This is the transcript of the phone
3 conversation that I just spoke about.

4 Q. Did you personally hear the phone conversation
5 at the time it was made?

6 A. Yes, I did.

7 Q. Did you oversee the creation of this
8 transcript?

9 A. Yes.

10 Q. Was the transcript made in the normal course
11 of business for the External Defense Agency?

12 A. Yes, sir.

13 MR. THOLE: Your Honor, at this time I move
14 for the admission of Exhibit 4 into evidence, the phone
15 transcript.

16 MS. HARRIS: No objection, Your Honor.

17 THE COURT: It is admitted.

18 BY MR. THOLE:

19 Q. Agent Read, please explain how this phone
20 transcript proves that the president of MESS, Devereaux
21 Terry, personally endorses international terrorism?

22 A. In the phone call, Mr. Terry is asked, "Do you
23 really think so, that someone will attack the US?" And

1 Mr. Terry responds "Well, I am not going to say that I
2 have any solid information, but it certainly would
3 bring me great pleasure if it did happen. I have lived
4 here since I was 14, and each day the hatred grows. It
5 is becoming close to unbearable."

6 Q. Agent Read, is there more?

7 A. Yes, there is.

8 Q. Please tell us?

9 A. Mr. Terry is then asked, "Then why are you
10 still staying? Why don't you go back to Aladdin?" And
11 Mr. Terry responds, "I am thinking of doing that, but
12 as much as I hate this country, I still need to learn
13 more about it."

14 Q. Now, you may place the Exhibit down, Agent
15 Read.

16 You have testified that you overheard this
17 phone call and that you oversaw the creation of this
18 transcript. Now, Mr. Terry has claimed in court today
19 that the phone call was made as a prank to get you in
20 trouble. Based on what you heard and what you see; is
21 there anything that indicates to you that this was a
22 prank?

23 A. No. No, there is not.

1 Q. At the time that the phone call occurred, were
2 you operating as an undercover Agent?

3 A. Yes, I was.

4 Q. Now, I would like to move to your third
5 conclusion; that if MESS is allowed to takeover
6 Delaware Marine, it would pose a threat to the national
7 security of the United States. Upon what did you rely
8 in reaching that conclusion?

9 A. The fact that the Delaware River is one of the
10 busiest international waterways in the US and the Port
11 of Wilmington's close proximity both New York and
12 Washington, DC, the financial and political capitals of
13 our country.

14 Q. How would Mideast Stevedores Services, MESS,
15 pose a threat to the national security of the United
16 States of America?

17 A. Aladdin, Mideast Stevedore Services and Mr.
18 Terry all have direct connections to international
19 terrorism. If they are allowed to have unrestricted
20 access to an American port, they could use it as a
21 gateway to launch terrorist attacks throughout the
22 country.

23 MR. THOLE: Thank you. Nothing further at

1 this time.

2 THE COURT: You may cross.

3 CROSS EXAMINATION

4 BY MS. HARRIS:

5 Q. Now, Mr. Read, you have flown into Aladdin's
6 national airport before, correct?

7 A. Yes, I have.

8 Q. And you believe that general aviation takeoffs
9 and landings are only allowed during the daytime hours;
10 isn't that true?

11 A. Yes.

12 Q. Yet people have flown in and out of the
13 airport during the nighttime; isn't that correct?

14 A. Yes, that's where the connection between the
15 airport and international terrorism comes from.

16 Q. You claim to have reviewed aviation records,
17 correct?

18 A. Yes, I was able to look at them during my time
19 with the EDA.

20 Q. Yet these report are not in court today for
21 the jury to see; isn't that true?

22 A. Well, unfortunately records like these I am
23 not able to take back to the EDA with me. I must leave

1 them there after reviewing them.

2 Q. You would agree with me, though, they were
3 recently declassified, correct, Mr. Read?

4 A. Yes.

5 Q. And they are not in court today, correct?

6 A. That's correct.

7 Q. And you would agree with me you were only able
8 to obtain a certification after what you characterize
9 as some pretty intense interrogation techniques; isn't
10 that true?

11 A. Oh, yes, I returned to the airport and spoke
12 with the custodian of records and signed an affidavit
13 verifying the records that were at the airport.

14 Q. You brought the custodian all the way to
15 Virginia to sign this, did you not?

16 A. Yes.

17 Q. And the custodian previously was in Aladdin;
18 isn't that correct?

19 A. Yes, that's correct.

20 Q. And you claim to have bank records; isn't that
21 true?

22 A. Well, I don't have the bank records. These,
23 again, are not here because I am unable to take them

1 back to the EDA with me.

2 Q. My point exactly, they are not in court today
3 for the jury to see, correct, Mr. Read?

4 A. That's correct.

5 Q. And you would agree me that you are familiar
6 with Devereaux Terry, true?

7 A. Yes.

8 Q. In fact, Mr. Terry went to Harvard University;
9 isn't that correct?

10 A. I'm not entirely positive, but I believe he
11 did.

12 Q. And this was the college where your acceptance
13 was denied because you were caught cheating at boarding
14 school; isn't that true, Mr. Read?

15 A. No, I never cheated at boarding school.

16 Q. Mr. Read, you would agree with me you claim to
17 have intercepted a telephone conversation between
18 Devereaux Terry and an unknown person; isn't that true?

19 A. Yes, the phone call right here.

20 Q. And you heard all these mentions of terrorist
21 activity; isn't that correct, Mr. Read?

22 A. Yes, ma'am.

23 Q. Yet as a terrorist expert, you did not feel

1 the need to take any legal actions again Mr. Terry;
2 isn't that true?

3 A. Well, I'm sorry, ma'am, but I am not able to
4 talk about any illegal actions that may or may not be
5 taking place.

6 Q. Mr. Terry was never deported from the United
7 States; isn't that correct?

8 A. I believe he wasn't.

9 Q. Mr. Terry's access into the United States was
10 never denied even though you heard all these mentions
11 of terrorist activity; isn't that correct?

12 A. I am not sure if his access was denied.

13 Q. Now, you would agree with me you claim to have
14 seen the prime minister of Aladdin in the presence of
15 Drew Terry, the known terrorist; isn't that true?

16 A. Yes, that's true.

17 Q. And you took a picture of him; isn't that
18 correct?

19 A. Yes.

20 Q. Despite all of your espionage connections, Mr.
21 Read, you took a picture with a camera phone, isn't
22 that true?

23 A. Well, yes, when you are working undercover in

1 a foreign country, you can't exactly walk around with a
2 camera and take pictures of official government
3 employees in compromising situations. They don't
4 exactly like that.

5 Q. But you do walk with around with a camera
6 phone and take pictures; isn't that true?

7 A. It's a lot easier to disguise a phone, you can
8 be looking at a text message, and it is a lot more
9 innocuous.

10 Q. But you would agree with me you do not have
11 the photo; isn't that correct?

12 A. Well, no, what happened was while I was on my
13 way back to America after taking the picture, I
14 realized I should return to the EDA. I was routed
15 through London, but an undercover Agent really isn't as
16 glorified as you would expect, I still have to go
17 through airport security like everyone else, and we all
18 know how that is, but at London it was directly after a
19 terrorist incident, so they were requiring all carry-on
20 luggage to go in the stowaway. So I put everything I
21 had on me except for my passport into my bag and when I
22 had landed back in America, I found that my bag was
23 open along with many other peoples' possessions; my

1 phone, my laptop, my -- several other things were all
2 taken.

3 Q. And you would agree with me this photo is
4 missing just like all the rest of the information that
5 you claim to have, Mr. Read?

6 A. No, ma'am.

7 Q. This photo is not missing?

8 A. No, not all the information is missing. There
9 is information here in the court today.

10 Q. But this photo is not here for the jury to
11 see; is that not true?

12 A. That's correct, the photo is not here, but
13 there is other information.

14 MS. HARRIS: No further questions, Your Honor.

15 THE COURT: Redirect.

16 REDIRECT EXAMINATION

17 BY MR. THOLE:

18 Q. Briefly, Your Honor.

19 Agent Read, counsel insinuated on cross
20 examination that your prior relationship with Mr. Terry
21 may affect your testimony in this case. How do you
22 respond to that?

23 A. I will not compromise the work that I have

1 done in protecting this country over some silly little
2 thing that happened back in high school.

3 MR. THOLE: Your Honor, I have nothing
4 further. May I publish Exhibit 4 to the jury for
5 review, that's the phone transcript.

6 MS. HARRIS: Your Honor, I have one objection.
7 Pursuant to Rule 4.11 publish it -- or more copies than
8 the one that was entered into evidence are not allowed
9 to be published to the jury.

10 THE COURT: Your request is denied. Thee is
11 nothing more particularly special about that Exhibit
12 than the others. The jury will consider them all in
13 the jury room together.

14 MR. THOLE: Yes, Your Honor.

15 MS. HARRIS: Yes, Your Honor.

16 MR. THOLE: Nothing further. Defense rests,
17 Your Honor.

18 THE COURT: Counsel prepared to close?

19 MS. PARKHOUSE: Yes, Your Honor.

20 THE COURT: You may proceed.

21 MS. PARKHOUSE: May it please the Court.

22 Members of the jury, the defense was right about one
23 thing, that DAM has a duty to promote, protect, and

1 preserve the best interests of its shareholders. Yet
2 all we have seen from Pat Kent and the board of
3 directors is the promotion of false hopes, failure to
4 protect their shareholders' rights to sell their shares
5 of their own volition and a desperate attempt to
6 preserve a failing company by bringing forth
7 ridiculous, and unfounded allegations that my clients
8 or the nation of Aladdin have any ties to international
9 terrorism.

10 Today we, the plaintiffs, have met our burden
11 to prove by a preponderance of the evidence that DAM,
12 through its board of directors, has breached its
13 fiduciary duty to its shareholders. Furthermore, the
14 defense has completely failed to carry its burden to
15 prove that MESS or the nation of Aladdin have any
16 material ties to terrorism, or that the proposed
17 business acquisition poses a threat to national
18 security.

19 Justice Steele will charge you that if it is
20 shown by employing the poison pill, DAM's board of
21 directors have failed to act on an informed basis, or
22 have failed to act in good faith, then they have
23 breached their fiduciary duty to their shareholders.

1 You have seen the lack of information in Pat Kent's
2 business plan, which he is promoting to his
3 shareholders as a reason not to sell for at least
4 another ten years. He wants to dredge the shipping
5 lanes of the Delaware River, yet has no idea whether or
6 not the Army Corps of Engineers is interested in
7 supporting this endeavor. He needs \$100 million to
8 retrofit, which DAM does not currently have. This plan
9 is a pipe dream, it is not made in good faith. While
10 Pat Kent waits around to see if luck goes his way, his
11 shareholders are left in limbo hoping that Pat Kent
12 will come to his senses.

13 Justice Steele will charge you that in coming
14 to your verdict in today's case you will be submitted
15 three questions. The first is whether or not you
16 believe the board of directors of DAM have breached
17 their fiduciary duty to their shareholders. Pat Kent
18 admitted to you that shareholders owning of more than
19 51 percent of the stock of DAM have already tendered
20 their shares, and that shareholders such as Aaron
21 Sussex have pleaded with him to lookout for their best
22 interest, redeem the poison pill, and accept the offer
23 by MESS. The evidence demands that you answer yes to

1 this question, Members of the jury, and find that DAM's
2 board of directors has breached its fiduciary duty to
3 its shareholders.

4 Your Honor, at this time I reserve the
5 remaining time for my rebuttal.

6 THE COURT: All right. Counsel.

7 MR. THOLE: Yes, Your Honor.

8 THE COURT: You may proceed.

9 MR. THOLE: Thank you. May it please the
10 Court. Counsel, Members of the jury. Delaware Marine
11 promotes, protects, and preserves the values which we
12 as Americans hold dear. Pat Kent, in promoting his
13 business plan, is protecting the interests of Delaware
14 Marine's stockholders and the United States, and
15 preserving the integrity of the company he built from
16 the ground up.

17 Mr. Kent founded Delaware Marine over four
18 decades ago when he was a young man with barely two
19 nickels to rub together. Under Mr. Kent and the
20 board's able leadership, Delaware Marine has thrived.
21 The company's stock rose consistently. It is traded at
22 well over \$20 per share, higher than MESS's offer.
23 Delaware Marine, like many American companies, suffered

1 stock market setbacks following the 9/11 attacks, but
2 the true value of a company like Delaware Marine cannot
3 be determine the by its stock price alone, as MESS
4 would have you believe.

5 Mr. Kent, and the board of directors at DAM
6 have intangible, intangible assets that go beyond the
7 stock price. They have the experience, the
8 institutional knowledge, and the business plan to
9 propel Delaware Marine into a safe and prosperous
10 future.

11 Members of the jury, MESS's offer was based on
12 a low-ball offer for the stock. It was not made in
13 good faith, and it does not represent this full value
14 of Delaware Marine with the intangible assets. MESS
15 deceptively made it appear as though they raised the
16 offer to \$20, but what MESS does not want you to know
17 is that the offer was not raised until this lawsuit was
18 filed. MESS has a hidden agenda. They knew full well
19 that Delaware Marine could not, in good faith, accept
20 any offer, \$20 or a million dollars per share because
21 Delaware Marine discovered that MESS has material ties
22 to terrorism. Pat Kent and the board of directors at
23 Delaware Marine have legitimate concerns, not only

1 effort stockholders, but for the security of our
2 country.

3 MESS is owned and controlled by the government
4 of Aladdin. Aladdin's national bank transfers and
5 holds funds for terrorists. Aladdin's national airport
6 grants special privileges to terrorists. Aladdin's
7 prime minister is a known associate with Drew Terry, an
8 admitted terrorist. Terry has murdered hundreds of
9 innocent people. Terry is the brother of Devereaux
10 Terry, the president of MESS, and Devereaux Terry,
11 president of MESS, spoke these words about America less
12 than three years before the September 11th terrorist
13 attacks: "It would bring me great pleasure to see this
14 country attacked. I hate this country."

15 The Court will instruct you that the burden of
16 proof in this case must be met by a preponderance of
17 the evidence, which means more likely than not. We
18 have shown you that it is more likely than not that Mr.
19 Terry, MESS and Aladdin all have material ties to
20 terrorism and that MESS would pose a threat to our
21 national security.

22 Under the Delaware anti-terrorism statute,
23 DAM, Delaware Marine, is not obligated to enter into

1 any business accommodation with MESS and, Members of
2 the jury, MESS has failed to meet its burden of proving
3 that Delaware Marine breached its fiduciary duty to the
4 stockholders.

5 Ever since 9/11, America has been forced to
6 look through a lens of caution. If you allow MESS to
7 takeover Delaware Marine, Mr. Terry and his terrorist
8 brother will attain a strategic position of power and
9 could make another attack at the heart of our country a
10 reality.

11 The Port of Wilmington is within driving
12 distance of New York, and Washington, DC, the financial
13 and political nerve centers of our country. When you
14 retire to deliberate, consider that a verdict in favor
15 of Delaware Marine is sound, safe and secure for the
16 stockholders and the nation. Delaware Marine promotes,
17 protects and preserves the values we, as Americans,
18 hold dear. Thank you.

19 THE COURT: Rebuttal.

20 MS. PARKHOUSE: Before I begin, may I inquire
21 as to how much time I have remaining.

22 TIME KEEPER: Two minutes 35 seconds.

23 THE COURT: Timekeepers agree?

1 TIME KEEPERS: Um-hmm.

2 MS. PARKHOUSE: Members of the jury, once you
3 have found that DAM's board of director has breached
4 its fiduciary duty to its shareholders, you will be
5 submitted two more questions. The first is whether or
6 not you believe the nation of Aladdin has material ties
7 to terrorism? And the second is whether or not you
8 believe that proposed business acquisition poses a
9 threat to national security?

10 When considering these two questions, Members
11 of the jury, remember that Pat Kent has absolutely no
12 plan to increase the security of his own port despite
13 the fact that his own consultant has recommended that
14 he do so. MESS, on the other hand, employs
15 state-of-the-art radiation detection and x-ray
16 technology at every port to preserve the safest
17 transportation possible.

18 Now, Chris Read has brought about a series of
19 baseless accusations that the nation of Aladdin has any
20 ties to international terrorism, but where is any of
21 the evidence which would corroborate this testimony?
22 Airport records, bank records, witness testimony,
23 pictures which supposedly link a known terrorist to the

1 prime minister of Aladdin? None of that evidence is in
2 court today, Members of the jury. You are forced to
3 rely upon the testimony of a man who spies against my
4 client dating back to high school.

5 Now, had the phone call been made by Devereaux
6 Terry in just ten-years ago been taken seriously, you
7 ran high a likelihood of being deported, arrested, or
8 being denied entry into the United States, but none of
9 these things has occurred. Thus the EDA knew all along
10 what we all know, that Devereaux Terry poses absolutely
11 no threat to national security to the United States.

12 I will never sell this company no matter what
13 the price. Listen to the words of Pat Kent. Do not be
14 fooled by empty, idealistic claims brought about by DAM
15 in a desperate attempt to cling to an ailing company.
16 Protect the United States by allowing MESS to employ
17 state-of-the-art technology, for DAM only employs guard
18 dogs and random checks. Promote the shareholders'
19 chances at maximizing their profits, and preserve the
20 rights of the shareholders by finding that they have
21 been unnecessarily forbidden from selling their stock
22 and return with that verdict in favor of the plaintiff.
23 Thank you.

1 THE COURT: Thank you, Counsel. There are
2 five steps that I am instructed to close the trial
3 with. First is the happy of all steps, and that is to
4 congratulate the teams and each member of the teams.

5 (Applause.)

6 THE COURT: This is not one of the steps, I
7 also want to thank our court reporter because that is
8 the longest I have ever had a court reporter sit
9 without a break.

10 (Applause.)

11 THE COURT: I am now to remind the scoring
12 judges that you may not confer when you complete your
13 score sheets and ask you to step outside of the
14 courtroom to complete those sheets. Even though my
15 colleagues are also scoring, I would ask them to remain
16 until I finish so we can leave together.

17 The final step is to ask whether either team
18 has any reason to believe that a material rules
19 violation has occurred during the trial?

20 MS. PARKHOUSE: None from the Plaintiff, Your
21 Honor.

22 MR. THOLE: No, Your Honor. Thank you for a
23 good round.

1 MS. PARKHOUSE: Likewise.

2 THE COURT: Again, thank you all for a good
3 round. The Delaware Supreme Court now adjourns.

4 (Whereupon the proceedings were adjourned.)
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CERTIFICATE OF COURT REPORTER

I, John P. Donnelly, RPR, Official Court Reporter of the Superior Court, State of Delaware, do hereby certify that the foregoing is an accurate transcript of the proceedings had, as reported by me, in the Superior Court of the State of Delaware, in and for New Castle County, in the case herein stated, as the same remains of record in the Office of the Prothonotary at Wilmington, Delaware. This certification shall be considered null and void if this transcript is disassembled in any manner by any party without authorization of the signatory below.

WITNESS my hand this 21st day of MAY, 2008.

Cert. # 161-PS

/s/ John P. Donnelly, RPR
Official Court Reporter